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CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, January 31, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

01-23-12A09:02 RCVD

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 789 Carolina #9

AT120002

The tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

B. 930 Pacific #4

AT120004

The tenants appeal the dismissal of their hardship challenge to a water bond passthrough due to their failure to appear at the hearing.

C. 1245 Hayes #6

AT120004 & -05

The tenant appeals two Minute Orders granting certification of capital improvement costs on the grounds of financial hardship.

D. 735 Taylor #303

AT120001

The tenant appeals the denial of his petition alleging decreased housing services based on the loss of quiet enjoyment of his unit.

E. 3122 – 22nd St.

AL110112

The Master Tenant appeals the decision finding that the subtenant was paying more for rent than the Master Tenant was paying the landlord.

F. 357 – 26th Ave.

AL110113

The landlord appeals the decision finding that the subject unit is not new construction and is subject to Rent Board jurisdiction.

G. 3380 – 21st St. #4

AL110125

The landlord appeals the decision finding that a rent increase is not warranted under Costa-Hawkins because an original occupant still resides in the unit.

H. 4056 – 26th St.

AL120003

The landlord appeals the denial of a petition seeking certification of capital improvement costs.

IV. Remarks from the Public (cont.)

VI. Old Business

- A. Eviction Notices and Third Party Water, Sewer and Garbage Billings to Tenants at Parkmerced

IV. Remarks from the Public (cont.)

VI. Old Business (cont.)

- B. Consideration of Possible Further Amendments to Rules and Regulations Section 12.20, as Revised on December 13, 2011, Regarding Unilaterally Imposed Obligations and Covenants of a Tenancy, Including Adding an Exception for Changes Required by Law

VII. Communications

VIII. Director's Report

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.



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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, January 31, 2012
at 6:00 p.m.
25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Gruber called the meeting to order at 6:04 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Henderson; Hurley;
Marshall; Mosbrucker.

Commissioners not Present: Beard.

Staff Present: Gartzman; Lee; Wolf.

Commissioner Mosser appeared on the record at 6:07 p.m.; Commissioner Murphy arrived at the meeting at 6:17 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 13, 2011.
(Mosbrucker/Hurley: 5-0)

IV. Remarks from the Public

1. Gerald Borjas, the tenant at 3380 – 21st St. #3 (AL110125), told the Board that he agrees with the Decision and Administrative Law Judge (ALJ) Berg's Memo. Mr. Borjas believes that he is protected under Costa-Hawkins.

2. Landlord Themis Drolapas of 3380 – 21st St. said that the tenant's mother moved out, and the tenant took possession of the unit with roommates. The landlord told the Board that Mr. Borjas was not an original tenant, and that he gave his rent payment to his mother. Mr. Drolapas said that the tenant claimed to have only one roommate, but he actually had two or three.

V. Consideration of Appeals

A. 789 Carolina #9

AT120002

The tenant's appeal was filed approximately 1 month late because the tenant did not receive the Decision of the Administrative Law Judge (ALJ) in the mail.

MSC: To find good cause for the late filing of the appeal.
(Murphy/Mosbrucker: 5-0)

The landlord's petition for rent increases based on increased operating expenses to the tenants in 9 units was granted. The tenant in 1 unit appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing on the tenant's claim of financial hardship.
(Marshall/Mosbrucker: 5-0)

B. 930 Pacific #4

AT120004

The tenants' appeal was filed 2 weeks late because the tenant assumed that the Rent Board would mail her the appeal form automatically, instead of her requesting it.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Mosbrucker: 5-0)

The tenants' appeal of a water revenue bond passthrough on the grounds of financial hardship was dismissed due to their failure to appear at the properly noticed hearing. The tenants appeal, explaining that their childcare arrangements fell through at the last minute, so they were unable to attend.

MSC: To accept the appeal and remand the case for a new hearing; should the tenants again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Gruber/Mosbrucker: 5-0)

C. 1245 Hayes #6

AT120004 & -05

The landlords' petitions for certification of capital improvement costs were approved pursuant to Minute Orders issued in 2005 and 2011. The tenant in 1 unit appeals the Minute Orders on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases for a hearing on the tenant's claims of financial hardship. (Mosbrucker/Marshall: 5-0)

D. 735 Taylor #303

AT120001

The tenant's petition alleging decreased housing services was denied because the ALJ found that the tenant had not suffered the loss of quiet enjoyment of his unit due to the landlord's inspections and requests for entry into his unit. The tenant appeals, claiming that: the landlord's entry into his unit in August of 2011 was unjustified; there was no electrical emergency, as the problem had been going on for years; and the landlord lied by saying that the police were present during the inspection.

MSC: To deny the appeal. (Hurley/Gruber: 5-0)

E. 3122 – 22nd St.

AL110112

The subtenant's petition alleging that he paid more for rent than the Master Tenant was paying the landlord was granted and the Master Tenant was found liable to the subtenant in the amount of \$1,328.88. On appeal, the Master Tenant claims that the ALJ erred as to the value of the storage space and furnishings.

MSC: To deny the appeal. (Murphy/Mosbrucker: 5-0)

F. 357 – 26th Ave.

AL110113

The tenant filed a petition seeking to determine whether the subject unit is subject to the Rent Ordinance or is exempt as new construction. Although a Permit of Occupancy was issued on July 9, 1980, a Certificate of Final Completion and Occupancy was issued on June 4, 1979. The ALJ therefore found that the building is subject to Rent Board jurisdiction. On appeal, the landlord argues that: this is a Class H building, which requires a Permit of Occupancy, which was issued after the effective date of the Ordinance; and the Certificate of Final Completion and Occupancy is not dispositive in this case, because it just signifies that construction was completed, and not that the building can be occupied.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

G. 3380 – 21st St. #4

AL110125

The landlord's petition seeking a determination pursuant to Rules Section 1.21 and Costa-Hawkins was consolidated with the tenant's petition alleging an unlawful rent increase from \$1,171.32 to \$2,000.00 per month. The ALJ found that the rent increase was not warranted because, although the original tenants no longer permanently reside at the subject unit, their son is an original occupant who has lived in the unit continuously since 1995. On appeal, the landlord argues that a minor cannot be an original occupant of a unit because Costa-Hawkins defines "tenancy" as including the lawful occupation of property and includes a lease or sublease, which a minor cannot enter into.

MSC: To deny the appeal. (Mosbrucker/Marshall: 3-2; Gruber, Hurley dissenting)

H. 4056 – 26th St.

AL120003

The landlord's appeal was filed 1 day late because mail delivery was delayed during the holidays.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Murphy: 5-0)

The landlord's petition seeking certification of capital improvement costs to 1 of 2 units was denied. On appeal, the landlord argues that: the lead-based paint hazard was remediated within 90 days of the problem having been cited, so the deferred maintenance defense should not apply; and the interior paint was of high quality, which could last for 25 years.

MSC: To deny the appeal. (Marshall/Mosbrucker: 4-1; Murphy dissenting)

VI. Old Business

A. Eviction Notices and Third Party Water, Sewer and Garbage Billings to Tenants at Parkmerced

Prior to public comment, Commissioner Murphy stated his opinion that Commissioner Marshall should not be acting in an adjudicatory capacity regarding this issue since she had advocated against the recently approved Development Agreement regarding this property, which he characterized as a "conflict of interest." Commissioner Marshall responded that she had been contacted by the Parkmerced tenants, but was not a paid advocate nor a litigant, and that she would not step down. Commissioner Marshall added that she felt that being an advocate for the Parkmerced tenants was "part of her job."

IV. Remarks from the Public (cont.)

3. Sara Shortt of the Housing Rights Committee told the Board that this issue arose when tenants came to her organization with eviction notices for alleged unpaid utility charges. Ms. Shortt assured the Board that she realized that any connection to the Development Agreement was not within their purview, but that "some things are." Ms. Shortt said that the utility charges fluctuate and are "funky;" she believes that the methodology being used is unclear as to fairness; and that the fact that the tenants are also being assessed a surcharge is "fishy."

4. Dean Preston of Tenants Together asked that the Commissioners set aside the "partisan divide" and look at the "alarming trend" of greatly increased eviction notices. Mr. Preston said that Stellar Management is well known for "pretextual evictions" and wondered whether these were designed to prevent tenants from exercising their rights to a new unit under the Development Agreement.

5. Cary Gold, the Managing Attorney for the Voluntary Legal Services Program, told the Board that she oversees evictions that go to court and that there were two in the last month that went to Settlement Conference. Ms. Gold said that the tenants were unable to pay the back utilities since they didn't get regular bills from the third party vendor. Ms. Gold

also said that the bills seemed higher than normal and expressed her opinion that increases in these charges constitute unlawful rent increases.

6. Tenant Lynn Hambolu thanked the Board for the reasonable accommodation they provided her. She told the Board that her eviction case is going through the courts because Parkmerced denied her a repayment plan and sent her rent back. Ms. Hambolu believes that the City has an obligation to look into this; that the "rights of the 99% have been violated;" and that "the landlord wants poor and working class tenants out of there."

7. Tenant Helanie Ting received a 3-Day Notice from the landlord but has receipts to prove that she paid her rent. Ms. Ting had to take out a loan with interest to cover the alleged arrearages. Eventually, senior management at the Housing Authority intervened to make the landlord admit that she didn't owe anything.

8. Carey Gold spoke again at the request of Commissioner Marshall and with the consent of the Board members. Ms. Gold said that there was fear and misunderstanding on the tenants' part regarding how to proceed. Once there was media attention, Parkmerced made a "savvy" decision to just go forward with non-payment of rent cases, but then required those tenants to pay the back unknown utility charges. Ms. Gold said that the Section 8 tenants were the hardest hit, as they were paying close to 40% of their income towards rent: it becomes a "struggle to stay in place" and people moved out.

VI. Old Business (cont.)

A. Parkmerced (cont.)

Commissioner Marshall opened the discussion by asking, rhetorically, what the Board's role is in this issue. She said that the Office of the City Attorney is already investigating whether this constitutes an unfair business practice. She also said that she didn't want to call for a "divisive vote" and that a tenant or tenants need to file a petition and have this issue come before the Board upon appeal. Commissioner Murphy maintained that 2 Unlawful Detainers out of 193 notices constitutes a "paper tiger."

B. Consideration of Possible Further Amendments to Rules and Regulations Section 12.20, as Revised on December 13, 2011, Regarding Unilaterally Imposed Obligations and Covenants of a Tenancy, Including Adding an Exception for Changes Required by Law

At their meeting on December 13, 2011, after a Public Hearing, the Board adopted an amendment to Rules and Regulations Section 12.20 that provided that a tenant could not be evicted for violation of a unilaterally imposed change in the terms of a tenancy unless the tenant accepted the newly imposed term in writing or the newly imposed term is authorized by the Rent Ordinance. At that time, the Commissioners agreed that they would re-visit necessary carve-outs for health and safety at this evening's meeting.

IV. Remarks from the Public (cont.)

9. Tenant Mary Ann Duke told the Board that she is against any further amendments to §12.20 because her landlord tries to "re-write the rules" and doesn't care if it's illegal.

10. Mara Mack translated for tenant Henry Pan, who said that immigrant Chinese families would be put at risk if the Board "kills 12.20." Mr. Pan said that altering 12.20 would alter the fundamental power relationship of rent control and that "leases would be meaningless." Mr. Pan feels that this is a particularly dangerous time as the America's Cup is coming, which will be "the dot com invasion all over again." Mr. Pan said that his landlady took away his washing machine because he asked for repairs and that he wouldn't have rented the apartment without laundry facilities.

11. Tenant Nicole Rivera said that one month after the Marino article appeared in the S.F. Apartment Magazine, she was given nine pages of new house rules. Ms. Rivera told the Board that her landlord tried to evict her without Just Cause and that "tenants need to be protected from a story like hers."

12. Wing Ho of the Community Tenants Benevolent Association told the Board that the proposed change would disproportionately affect low-income tenants, who wouldn't understand, which would provide landlords with opportunities to evict.

13. A tenant told the Board that a lease is an agreement between an owner and his or her tenants and that allowing a landlord to change the lease without the tenant's input is unfair; bad landlords can use such charges to evict tenants.

14. Michelle Horneff-Cohen, President of the Professional Property Management Association of San Francisco, spoke in favor of an amendment offered by members of the landlord community. Ms. Horneff-Cohen said that the December 13th amendment to Rules §12.20 imposes an undue burden on landlords by limiting eviction for violation of a covenant in the lease to obligations included in the rental agreement at the inception of the tenancy. Ms. Horneff-Cohen pointed out that this does not allow for changes that may be required by law or to protect the health, safety and quiet enjoyment of other occupants in the building.

15. Paige Kuhn of Causa Justa spoke in support of the recent amendment. Ms. Kuhn agreed that cigarette smoke is a health risk, but said that landlords don't always have their tenants' health in mind. Rather, Ms. Kuhn maintained that the "profit motive" is behind landlords trying to expand their opportunities to evict tenants. Ms. Kuhn postulated that if landlords were concerned about health and safety, their units would be up to code and tenants would not be served with eviction notices after asking for repairs.

16. Landlord Jim Hirsch said that landlords need to have the flexibility to change House Rules. Mr. Hirsch told the Board that most agreements are verbal and in the nature of "gentleman's agreements." Mr. Hirsch said that most landlords are not interested in taking privileges away from tenants but that situations that a landlord can't contemplate come up all the time. Mr. Hirsch concluded by calling this "an invitation to chaos."

17. Landlord Marina Franco said that she owns rental property in Burlingame and her tenants on the peninsula have to follow State law. She asked why this shouldn't be the case in San Francisco as well. Ms. Franco asked that the Board consider the landlord community's proposal and allow landlords to bring their House Rules into compliance with applicable law.

18. Peter Reitz, President of the Small Property Owners of San Francisco, inquired as to whether the Board was just considering adding a "required by law" exception, or reopening the whole issue. Mr. Reitz said that the Board should allow property owners to protect good tenants, or they won't be able to do anything about the "small nuisances," such as barbecues in the hallway.

19. Tenant Margaret Foster said that she lived in her unit with two different landlords for forty-three years, and the terms of her tenancy remained the same. Now, Ms. Foster has a new landlord who has issued seven pages of new House Rules that are materially different and take away existing rights. Ms. Foster's landlord has been un-responsive and she fears that the new Rules will be used to evict her. Ms. Foster supports any amendment that strengthens 12.20.

20. Landlord David Fix asked the Board to adopt an amendment that would allow a landlord to abide by State and local law, and said such an amendment shouldn't be controversial.

21. Renee Curran, who is a counselor at the Tenants' Union, said that landlords are being disingenuous because they can evict problem tenants for creating a nuisance. Mr. Curran said that at the Tenants' Union they are seeing unjust changes, such as the revocation of the right to have a pet.

22. Susan Weisberg, also a counselor at the Tenants' Union, said that these changes affect people's homes and are not just "rules." Ms. Weisberg said that a tenant came in with a notice taking away their garage and the right to have a roommate. Ms. Weisberg feels that the landlords' proposed changes don't protect tenants, but are ways to get rid of low rent paying, long-term tenants. Ms. Weisberg opposes any change that "weakens the right to stable housing."

23. Tenant Bryan Chandler said that his House Rules were changed after twenty years because his landlord was selling the house. Mr. Chandler was told that if he didn't agree with the new rules, his tenancy was terminated. The changes included: no pets, although his neighbor has had a dog for five years; no back yard use; no motorcycle parking in front of the building; and no guests for over seven days. Mr. Chandler believes that there was only one reason for the changes, which was to get him out of his home.

24. Tenant Courtney Green told the Commissioners they have a tough job. Ms. Green was informed by her landlord that she could no longer use the washer and dryer, and that they wanted the parking spot for themselves. Ms. Green said that she supports 12.20 and told the Board to "keep protecting tenants."

25. Charlie Frederick of the Mission SRO Collaborative said that tenants want the right to know if a unit's smoke-free, but that smoking's the "no pet policy of the '90's." Mr. Frederick told the Board that San Francisco residents "organize and know their rights and won't submit to unilateral changes."

26. Landlord Sam Roake supports any amendments that let landlords comply with the law. Mr. Roake has had to amend his rental agreement; otherwise, other tenants can be inconvenienced or endangered.

27. Tommi Avicolti-Mecca of the Housing Rights Committee opposes any changes to 12.20 that weaken it. Mr. Avicolti-Mecca said that no tenant has ever complained that their landlord is forcing them to recycle. Rather, Mr. Avicolti-Mecca said that unilateral changes are usually imposed by a new landlord to long-term tenants paying below market rent. If following governmental regulations is the landlord's concern, he suggests that they remedy defective conditions.

28. Staff Attorney Matt Mac Farland of the Tenderloin Housing Clinic said that the Clinic supported the original amendments to 12.20 but oppose a "required by law" exception. Mr. Mac Farland said that they are seeing numerous low-rent paying tenants receiving unilateral changes in the terms of their tenancies and being faced with the "brow-beating threat of eviction." He told the Board that there is a place for \$827 changes, which the Clinic uses to make the administrative process run more smoothly. However, they are not seeing changes for health and safety reasons but, rather, abuses "that are really happening."

29. Tenant Berta Peres said that her landlord is not respecting their contract. Ms. Peres prevailed in a rent increase case and the landlord subsequently took away the garage and required that the tenants move their belongings due to alleged pests, among other changes. Ms. Peres found out her rights and got them to stop, but said her family life had been adversely affected by all the new rules. Ms. Peres told the Board that "I support you in supporting us."

30. An attorney for the Homeless Advocacy Project said there were long-standing arrangements with the prior owner but the new owner is attempting to evict for violation of newly imposed rules. The attorney addressed landlords' concerns regarding nuisance cases by saying that there are tools to address problem tenants.

31. Tenant Robin Ryan said that she works for her landlady, who gave her four days' notice to move all of her furniture out of the unit so she could paint, and then moved her own furniture into the tenant's wash room. Ms. Ryan said that she was able to negotiate these issues because of 12.20, and asked that there be no changes to the regulation.

32. Ted Gullickson of the Tenants' Union said that evictions due to violations of unilateral changes in the terms of tenancies always involve long-term tenants, and never new tenants. Mr. Gullickson reminded the Board of the genesis of the regulation: in 1997, there was a wave of evictions due to unilateral changes in terms, including an elderly

couple who were being evicted due to the presence of a goldfish in the unit. Mr. Gullickson said that his preference would be for there to be no further changes to §12.20, but he could "live with" the staff recommendation and thought it would do no harm.

33. Attorney Tom Drohan of Legal Assistance to the Elderly said he was the lawyer who "screwed up" the Marino case. Mr. Drohan said that everything was fine until his client got a new landlord who prohibited subletting. The court agreed with the landlord that his client had violated the rental agreement and found that his remaining in the unit equaled acquiescence to the changed terms. Therefore, Mr. Drohan told the Board, the requirement in the amended regulation that the tenant agree to the changes in writing is key; the Los Angeles Ordinance also has this requirement. Mr. Drohan maintained that "landlords have a remedy for bad tenants but tenants don't have a remedy for bad landlords," and that all of the situations described by the landlords in attendance constituted nuisances for which the landlord could evict

34. Lorraine Calcagni said that she is a friend of the tenant in the Marino case, who is a famous Flamenco dancer. Ms. Calcagni told the Board that the new landlord had tried to evict him for three years, and finally got him out with new House Rules. She said that the tenant is now living in a 10 x 10 foot hotel room with a stranger, and that he has aged terribly.

35. Landlord Robert Link spoke in support of the landlord community's proposal, which he said is not a "re-write" but, rather, a "modification" that allows for compliance with Federal, State and local law.

36. Janan New, Executive Director of the S.F. Apartment Association, also asked that the Board enact amendments that would allow for changes to State, local and Federal law. She also asked that there be a "safe harbor" for litigation in that landlords shouldn't be held liable if they cannot stop tenants from smoking in their buildings.

37. Sara Shortt of the Housing Rights Committee said that the effects of the landlords' proposal were being "underplayed." Ms. Shortt maintained that 12.20 doesn't stop the imposition of House Rules, but just requires that tenants have to sign off, which they would do if reasonable. Ms. Shortt said that 12.20 serves to protect tenants who have outrageous landlords, who are trying to effect an "end run" around the Just Cause provisions of the Rent Ordinance. Ms. Shortt suggested that it is disingenuous to do this before the Commission, rather than the Board of Supervisors.

38. Tenants' Union counselor Bobby Coleman said that he agreed with the analysis Commissioner Crow put forward in a letter to the Board. Mr. Coleman told the Board that reconciling the regulations with State law is not a "slam dunk," and he was surprised to see how far the landlord community pushed. Mr. Coleman asked that the Board "do no further damage to tenants."

39. Mr. Garcia of Causa Justa said that landlords are just looking for an excuse to get rid of tenants. Mr. Garcia's landlord is accusing him of denying access to his unit and being

rude to the landlord's workers. Mr. Garcia also uses incense in his unit as part of his Native American religion and asked that the Board not change the amendment.

40. Michael Barron said the issue boils down to one of contract law: one party can't make changes to a lease without it being a breach. Mr. Barron said that the Board is "setting yourself up for lawsuits."

41. Dean Preston of Tenants Together said that unilateral changes defeat the purposes of rent control and that the decision in the Marino case was "cutrageous and poorly reasoned." Mr. Preston told the Board that, when they passed SB 332, the State legislature preserved tenant protections everywhere except San Francisco. Mr. Preston believes that the staff proposal is "probably not necessary but probably won't hurt," whereas the landlord proposal is a "massive loophole." Mr. Preston also said that the Action Apartments case has provided an incentive for unscrupulous landlords to take advantage of tenants with no consequences.

42. Tenant Alex Kaufman said that there are always evil people in the world, and that laws exist to protect both sides: it is the folks in the middle, good landlords and tenants, who wind up suffering. Mr. Kaufman told the Board that the law shouldn't detract from anyone's livability. Mr. Kaufman believes that landlords need to enforce rules as time passes and that it is not fair for someone to develop lung cancer because someone else is smoking in their unit. Mr. Kaufman asked that the Board "protect the general public, and not one person."

43. Tenant Gina Hollis said that tenants didn't have problems with House Rules until the 90's and that owners need to spend money for good building managers. Ms. Hollis also postulated that "most rules changes are takeaways" which make the building less livable.

44. Attorney Depo Varma of the Eviction Defense Collaborative said that they started seeing these problems shortly after the Marino decision. Mr. Varma believes it legally makes no sense to modify a contract without input from the other side, and that there is an imbalance of power in these relationships.

45. Tenants' Union counselor Leila Stanley said that almost every volunteer shift someone comes in with unilateral changes in the terms of their tenancy. Ms. Stanley admitted that sometimes tenants are in the wrong but these situations never involve complaints against the tenant – they are "out of the blue." Ms. Stanley believes that these are thinly veiled eviction attempts and that "contracts are entered into freely." Ms. Stanley said that landlords' Just Cause eviction remedies remain, and asked that the Board not weaken 12.20.

46. Tenants' Union counselor Eihway Su confirmed what Leila Stanley had to say. In San Francisco, parking and storage can't be replaced and very tight spaces can be made unlivable. Mr. Su postulated that weakening 12.20 would make harassment easier: "another way to get rid of your tenant." Mr. Su emphasized the importance of diversity in San Francisco and told the Board they need to "help those who have less."

47. Lucia Kimble of Causa Justa asked that the Board leave the amendment as is. Ms. Kimble said that the issue is not the health of tenants, but the power to evict tenants, and that the consequences are "dire." Ms. Kimble suggested that the landlords approach the Board of Supervisors.

48. Landlord Craig Berendt said that landlords are concerned with the health, safety and security of their buildings and that leasing agents want to keep tenants. Mr. Berendt was concerned that smoking tenants can affect the health of others.

49. Tenant Michael Wall said that Civil Code §827 constitutes "mischief" and undermines the Rent Ordinance. Mr. Wall believes that Rules §12.20 imposed restraints on wrongful evictions, although the recent Marino decision "put 12.20 out of existence." Mr. Wall disagreed with the court's finding that staying in the unit and continuing to pay rent constitutes consent to changed terms.

50. Tenant Craig Epstein said that there is no State law against subletting, but there is against smoking. Mr. Epstein contended that this is equivalent to the "stone ages," and that "landlords should at least have that right."

51. Tenant Lupe Aureola told the Board that she has a "great landlord" because they have clear expectations of the other, and both expect the other not to change terms without negotiation. Ms. Aureola said "we all live under contracts" and no one would want to discover the other party had changed their agreement. Ms. Aureola asked the Board to "respect the terms we signed on to."

52. Tenant Attorney Wallace Oman depicted the "extreme ends of the housing industry: small mom and pops vs. predatory landlords." Mr. Oman said there are problems at each end. Mr. Oman told the landlords in attendance to be reassured that tenants who mis-behave can be evicted without too much difficulty, unless the landlord attorney "screws up." It is not as easy as for non-payment, but bad tenants can be evicted.

53. Landlord Robin Altman asked that the Board be reasonable and pass a further amendment to enable landlords to change the terms of a tenancy if the law requires it.

54. Keith, a counselor at the Tenants' Union, said that he supports the Senior Staff proposal and opposes the draft put forward by the "real estate speculator industry." Keith maintained that the landlords' proposal was "absurdly and greedily over-broad" and "the basis for a cause of action." He reminded the Board that 12.20 has already been weakened by the Marino decision and asked them to "act responsibly."

VI. Old Business (cont.)

B. Rules and Regulations Section 12.20 (cont.)

After the public comment, the Board passed the following motion:

MSC: To adopt the additional amendment to newly amended Rules and Regulations §12.20 put forward by Senior Staff, effective February 1, 2012. (Mosbrucker/Murphy: 5-0)

Amended Section 12.20 of the Rules and Regulations now reads as follows (new language underlined):

Notwithstanding any change in the terms of a tenancy pursuant to Civil Code Section 827, a tenant may not be evicted for violation of a covenant or obligation that was not included in the tenant's rental agreement at the inception of the tenancy unless: (1) the change in the terms of the tenancy is authorized by the Rent Ordinance or required by federal, state or local law; or (2) the change in the terms of the tenancy was accepted in writing by the tenant after receipt of written notice from the landlord that the tenant need not accept such new term as part of the rental agreement. The landlord's inability to evict a tenant under this Section for violation of a unilaterally imposed change in the terms of a tenancy shall not constitute a decrease in housing service under the Rent Ordinance as to any other tenant.

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

- A. The office workload statistics for the months of November and December, 2011.
- B. Letters and proposals concerning proposed amendments to Rules and Regulations §12.20.
- C. Articles from the S.F. Examiner, the Wall Street Journal, the S.F. Bay Guardian, and BeyondChron.
- D. The Rules and Regulations, as amended on December 13, 2011.
- E. 2011/2012 Form 700 Statement of Economic Interests, Sunshine Ordinance Declaration, and Certificate of Ethics Training.

VIII. Director's Report

Executive Director Wolf told the Commissioners that the Rent Board now has a Twitter account; that their annual Statement of Economic Interests are due by April 1st; and that a dinner honoring ex-Commissioner Henderson will be held after the Board meeting on February 28th.

IX. New Business

Departmental Budget

Executive Director Wolf went over the Department's proposed budget for Fiscal Year 2012-2013. The proposed budget of \$5,986,248 is \$129,640 more than last year's budget primarily due to salary step increases, retirement and health care costs.

MSC: To adopt the proposed budget for Fiscal Year 2012-2013.
(Marshall/Gruber: 5-0)

X. Calendar Items

February 28, 2012

8 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 9:10 p.m.

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DAVID GRUBER
PRESIDENT

BROOKS BEARD
DAVE CROW
SHOBA DANDILAYA
DEBORAH HENDERSON
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, February 28, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

02-23-12P01:20 RCV0

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 75 Buena Vista East #703, 601, 705, 704
& 305

AT120008 thru -10, -12& -15

The tenants in five units appeal the decision granting operating expense increases on the grounds of financial hardship.

B. 575 Columbus #16

AT120016

The tenant appeals the dismissal of his petition alleging decreased housing services.

C. 60 Diamond St.

AT120018

The subtenant appeals the dismissal of his petition alleging that he paid a disproportional share of the rent pursuant to Rules §6.15C(3).

D. 405 Serrano, Apt. 10F

AT120013

The tenant appeals the denial of her petition alleging decreased housing services.

E. 1290 Noe

AL120011

The landlord appeals the decision granting a claim of unlawful rent increase.

F. 3303-3315 Sacramento St.

AL120006 & AT120007

The Master Tenant and subtenant appeal the decision denying a Rules §6.15C(3) claim but partially granting claims of decreased housing services.

G. 1059 Leavenworth #20

AT110114

The tenant appeals the decision that determines her base rent.

H. 4719 Geary #207

AL120014

The landlord appeals the decision granting a claim of unlawful rent increase under the Section 8 Program.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

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IX. New Business

X. Calendar Items

XI. Adjournment

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03-22-12 P12:44 IN

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

DAVID GRUBER
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DEBORAH HENDERSON
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, February 28, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Gruber called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Gruber; Hurley; Mosbrucker; Mosser;
Qian.
Commissioners not Present: Dandillaya.
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:30 p.m.; Commissioner Murphy arrived at the meeting at 6:14 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 31, 2012.
(Hurley/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Attorney Tom Drohan of Legal Assistance to the Elderly told the Board he represented the tenant at 1290 Noe (AL120011) in an Unlawful Detainer action. Mr. Drohan said that the Administrative Law Judge (ALJ) found the tenant's testimony that he moved into the unit in 1975 credible. Mr. Drohan told the Board that many of his senior clients' tenancies pre-date Rules §6.14 and the Costa-Hawkins Rental Housing Act, but they would have been tenants under the Rules in effect at the time.

B. Tenant Lisa Giampolli of 1059 Leavenworth (AT110114) told the Board that the landlord "has done lots of things," tenants in the building are afraid and some have moved out. Ms. Giampolli felt that she was "dismissed" by the ALJ and the Decision is the reverse

of what she said at the hearing. Ms. Giampolli is frustrated by what she perceives as tenants getting little help at the Rent Board.

C. Tenant Charles Roberts of 1290 Noe said that he was good friends with the prior landlord, but the new owner is saying he didn't live there. Mr. Roberts told the Board he has proof he has lived in the unit since 1975.

D. Charles Robert's sister, Karen Roberts, said that she moved in to the unit in 1972 and that her brother moved in after her husband moved out. Ms. Roberts told the Board that her brother was gone for seven months due to a fire, but moved back in with the landlord's permission.

E. Christine Broussard, friend and neighbor of Charles Roberts, told the Board that Mr. Roberts had always lived in the unit with his sister and that the landlord knew it.

F. Herman Latercorn told the Board that he moved in to 1292 Noe in 1980 and moved out in 1985. Mr. Latercorn said that the Roberts family was living at 1290 Noe since before he moved in and he could vouch for their tenancy.

G. Charles Robert's brother, Carl Roberts, told the Board that he lived in the unit with his other relatives until the landlord evicted him.

V. Consideration of Appeals

A. 75 Buena Vista East #703, 601, 705, 704
& 305

AT120008 thru -10, -12 & -15

The tenant in unit #704 filed his appeal 6 days late because he was out of town at the time the decision was mailed, assisting his elderly mother. The tenant in unit #305 filed 10 days late because of a severe inner ear problem.

MSC: To find good cause for the late filing of the appeals.
(Marshall/Mosbrucker: 5-0)

The landlord's petition for rent increases to 27 of 37 units based on increased operating expenses was granted. The tenants in 4 units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for hearings on the tenants' claims of financial hardship.
(Mosbrucker/Marshall: 5-0)

B. 575 Columbus #16

AT120016

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant maintains that he was sick on the day of the hearing, and unable to attend.

MSC: To accept the appeal and remand the case for a new hearing; should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

C. 60 Diamond St.

AT120018

The subtenant's petition alleging that he paid a disproportional share of the rent pursuant to Rules §6.15C(3) was dismissed due to his failure to appear at the hearing. On appeal, the tenant maintains that the Notice of Rescheduled Hearing was sent to his old address, and he did not receive it. The subtenant attaches a Declaration of Non-Receipt of Notice of Hearing in support of his claim.

MSC: To accept the appeal and remand the case for a new hearing.
(Marshall/Mosbrucker: 5-0)

D. 405 Serrano, Apt. 10F

AT120013

The tenant's petition alleging decreased housing services was denied because the ALJ found that the construction claims were barred by the Golden Gateway decision; the pest infestation problem was properly remedied by the landlord; and the tenant failed to meet her burden of proving an alleged lack of heat, nor did she provide notice to the landlord. The tenant appeals, claiming that the following evidence was not considered by the ALJ: medical records showing that the tenant's breathing problems commenced with the onset of the construction work; pictures demonstrating how mice entered the unit; medical records showing that the tenant's access to the building was barred during the time the front entrance was inaccessible; and a calendar entry regarding a call to the landlord regarding the lack of heat. The tenant also claims that she was not provided an opportunity to refute the landlord's evidence.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

E. 1290 Noe

AL120011

The tenant's petition alleging an unlawful rent increase from \$1,033.61 to \$2,500.00 was granted because the ALJ found no Costa-Hawkins increase is warranted because the petitioner is a subtenant who resided in the unit prior to January 1, 1996 and a 6.14 notice was not timely served. On appeal, the landlord maintains that: the ALJ should have granted a motion to exclude witnesses from the hearing, as their testimony was self-serving; the ALJ erred in holding the deceased landlord responsible for actions taken prior to the enactment of Rules §6.14; the current landlord had no knowledge of the petitioner's presence in the unit prior to issuance of the 6.14 notice; and the petitioners lacked credibility.

MSC: To recuse Commissioner Murphy from consideration of this appeal.
(Mosbrucker/Gruber: 5-0)

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

F. 3303-3315 Sacramento St.

AL120006

The subtenant's petition alleging that he paid a disproportional share of the rent was denied. However, 2 of 7 decreased housing claims were granted and the Master Tenant was found liable to the subtenant in the amount of \$260.00 for the loss of a common room area and Internet service. Both the Master Tenant and subtenant appeal the decision. The Master Tenant maintains that: the unit is Proposition 1 Affected and therefore exempt; the subtenant failed to meet his burden of proof and did not provide copies of his submissions for the Master Tenant; internet access is not a necessity, the subtenant failed to prove the cost of replacement internet service and \$30 constitutes a windfall; and the subtenant did not use the common room, nor should his witness be considered credible. The subtenant claims that: the ALJ erred regarding the square footage calculations of the rooms in the unit; the Master Tenant paid no or extremely low rent by profiteering off of his subtenants; he lost the use of the common room in the apartment at an earlier date; and he gave up the second room because of threats and intimidation by the Master Tenant.

MSC: To deny both the Master Tenant's and subtenant's appeals.
(Marshall/Mosbrucker: 5-0)

G. 1059 Leavenworth #20

AT110114

The tenant filed a petition seeking a determination of the proper base rent. The ALJ found that the landlord's agent had mistakenly reduced the tenant's rent from \$913.00 to \$670.00 and the landlord's restoration of the prior base rent amount did not constitute an unlawful rent increase. On appeal, the tenant argues that: there is no evidence that the lowered rent amount was the result of a mistake; she reasonably believed that the prior landlord intentionally lowered her rent; the prior and current landlords are sophisticated business people who are likely to be familiar with their rent rolls; there are factual errors in the ALJ's decision which cannot be used to support a finding of unclean hands; the tenant did not engage in fraud or misrepresentation; and the attorney who accompanied the tenant at the hearing was a friend, and not her representative.

MSC: To recuse Commissioners Crow and Mosbrucker from consideration of this appeal. (Murphy/Gruber: 5-0)

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

H. 4719 Geary #207

AL120014

The tenant's petition alleging unlawful rent increase was granted because the ALJ found that the tenant's rent was above the Payment Standard established for Section 8 units. On appeal, the landlord argues that: Federal law authorizes the Housing Authority to establish a Payment Standard at any level between 90 and 110% of the published Fair Market Rent (FM) for that unit size; the Housing Authority is not precluded from using alternative valuations for units that have different, or superior, characteristics; federal regulations allow approval of rent increases well above the FMR on a case-by-case basis; and it is bad public policy to discourage private landlords from participating in the Section 8 program.

MSC: To recuse Commissioner Gruber from consideration of this appeal.
(Murphy/Mosbrucker: 5-0)

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of January, 2012.

B. Articles from the New York Times, the S.F. Examiner, Fog City Journal, the Bay Citizen, the Washington Post, and S.F. Gate.

C. A new copy of the Rules and Regulations containing the amendment to Rules §12.20, effective February 1, 2012.

VII. Director's Report

Senior Administrative Law Judge Tim Lee told the Board that the City prevailed on the Carland writ, where the landlord depicted rent "rebates" to the tenant as not affecting the amount of the lawful base rent. Executive Director Wolf told the Board about the agency's ongoing outreach program on Muni buses throughout the City and reminded them to turn in their Statements of Economic Interest by April 1st.

IV. Remarks from the Public (cont.)

H. The Master Tenant in the case at 60 Diamond told the Board that the mail did go to the subtenant who brought the appeal but he "tends to flake out and be irresponsible."

VIII. Calendar Items

March 27, 2012
10 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 7:00 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.

Addendum: Any summary statements are provided by the speaker and appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy by the San Francisco Rent Board.



03-22-12 P12:42 IN

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

DAVID GRUBER
PRESIDENT

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BARTHOLOMEW MURPHY
KENT QIAN

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 27, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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MAR 23 2012

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 2731 - 37th Ave. #A

AT120021

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 742 Treat

AT120026

The tenants appeal the remand decision denying their claim of financial hardship because the third occupant of the unit failed to fill out a Hardship Application.

C. 1 Castro #1

AL120027

The landlord appeals the decision granting a claim of decreased housing services due to loss of quiet enjoyment of the unit.

D. 68 Pierce St.

AL120019

The landlord appeals the decision granting a claim of unlawful rent increase.

E. 670 Capp St.

AL120020

The landlord appeals the determination that no rent increase is authorized by Rules §1.21 or Costa-Hawkins.

F. 2447 Post St.

AL120024

The Master Tenant appeals the decision granting claims of decreased housing services and that the subtenant paid a disproportional share of the rent pursuant to Rules §6.15C(3).

G. 743 Grove #2

AT120022

The tenants appeal the remand decision finding that decreased housing services had been restored.

H. 1995 Chesnut #208

AL120023

The landlord appeals the decision granting a claim of decreased housing services due to a change from covered to uncovered parking.

I. 3435 A 20th St.

AL120025

The landlord appeals the decision granting a claim of decreased housing services due to the change from landlord provided to tenant paid gas service.

J. 2065 Fulton

AL120028

The landlord appeals the decision granting a claim of unlawful rent increase.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

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IX. New Business

X. Calendar Items

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Delene Wolf
Executive Director

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 27, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Gruber called the meeting to order at 6:04 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Dandillaya; Gruber; Hurley; Marshall;
Mosser.

Commissioners not Present: Mosbrucker; Qian.

Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:06 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 28, 2012.
(Crow/Murphy: 5-0)

IV. Remarks from the Public

A. Landlord Douglas Earl of 1995 Chesnut (AL120023) said that the current decision ignores a 1983 decision finding that the tenant did not have a parking space at the inception of the tenancy. Mr. Earl cited a Rent Board leaflet, which explains that a housing service added after the commencement of the tenancy for no additional consideration, does not warrant a rent reduction when taken away. Mr. Earl told the Board he did not take away the parking space and that, "if I can remove it, I can move it."

B. Saul Ferster, Attorney for the landlord at 743 Grove (AT120022), said that the landlord has restored all amenities to the work/storage room that the tenants had been illegally subletting. The tenants had argued that the room was valueless without a locking

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door and electricity, but the mesh door that the landlord installed provides greater security. Mr. Ferster maintained that a working area warrants lesser requirements than a living area.

V. Consideration of Appeals

A. 2731 – 37th Ave. #A

AT120021

The landlord's petition for certification of the costs of a new roof to both units at the property was granted, resulting in a monthly passthrough in the amount of \$46.07. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Murphy: 5-0)

B. 742 Treat

AT120026

The tenants' hardship appeal of a decision certifying capital improvement costs was granted. On appeal by the landlord claiming that a third occupant lived in the unit, the case was remanded for a supplemental hearing. In the Decision on Remand, the Administrative Law Judge (ALJ) found that the tenants had failed to prove their hardship claim, since the third occupant of the unit had failed to submit a Hardship Application. On further appeal, the tenants claim that: the third occupant in the unit will now be paying \$500.00 towards the monthly rent; one of the tenants will soon be unemployed; and the retroactive amounts owed present an additional hardship.

MSC: To deny the appeal. However, should the tenant's financial circumstances change, and the third occupant of the unit is willing to file a Hardship Application, the tenant may re-file the hardship appeal.
(Murphy/Gruber: 5-0)

C. 1 Castro #1

AL120027

The tenants' petition alleging decreased housing services due to loss of quiet enjoyment of their unit was granted, in part, and the landlord was found liable to the tenants in the amount of \$1,050.00 due to noise from another unit in the building. The landlord, who failed to appear at the hearing, appeals on the grounds that he was denied due process in that his side of the story was not heard by the ALJ.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a new hearing; should the landlords again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Murphy/Gruber: 4-1; Marshall dissenting)

D. 68 Pierce St.

AL120019

The tenants' petition alleging an unlawful rent increase from \$4,001.00 to \$7,200.00 was granted because the ALJ found that the subject dwelling unit is not separately alienable

under Costa-Hawkins and one of the tenants is a tenant rather than a subtenant. On appeal, the landlord claims that: the premises have always been a single-family dwelling; the downstairs rooms are storage areas and not rental units; there are factual errors and evidence of bias in the Decision; and the tenant lied at the hearing.

MSC: To deny the appeal. (Crow/Marshall: 5-0)

E. 670 Capp St.

AL120020

The landlord filed a petition seeking a determination as to whether any of the occupants of the unit are "tenants in occupancy" pursuant to Rules §1,21 and whether he is entitled to a rent increase under Costa-Hawkins. The ALJ found that no increase is warranted because tenant Gonzalez resides in the unit as her principal place of residence and tenant McGill is temporarily away furthering her education. On appeal, the landlord claims that tenant McGill is not a tenant in occupancy because: she failed to produce evidence of her intent to return to the subject unit, although the record was left open for her to do so; video surveillance fails to show Ms. McGill entering the building, although she claimed to have done so; the landlord provided evidence that the tenant principally resided at another unit in San Francisco; and there is insufficient room for tenant McGill to be residing at the subject unit.

MSC: To deny the appeal as to tenant Gonzalez but remand the case to the Administrative Law Judge for a supplemental hearing to determine whether tenant McGill was a Tenant in Occupancy at the time the petition was filed. (Murphy/Gruber: 4-1; Crow dissenting)

F. 2447 Post

AL120024

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$354.00. Additionally, a claim of decreased housing services was granted and the Master Tenant was found liable to the subtenant in the amount of \$313.50 due to lack of a working bathtub. The Master Tenant appeals, arguing that: his petition against the owner of the building on the same issues should have been heard simultaneously with the instant case; when he took over the lease, another subtenant in the unit was paying less than a proportional share of the rent and so the Master Tenant spread out the remainder among the other subtenants; and the Master Tenant was denied due process because he was unable to question the subtenant regarding her need to take baths instead of showers.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

G. 743 Grove St. #2

AT120022

The tenants' petition alleging decreased housing services was granted in part and denied in part. Pursuant to the tenants' appeal, the case was remanded to grant a rent reduction in the amount of \$497.00 until a locking door and electricity were restored to a downstairs room in the unit. On remand, the ALJ found that the services had been sufficiently

restored. The tenants appeal the remand decision, arguing that: a mesh door is not comparable to a solid wood door and constitutes a substantial decrease in services; the landlord admitted that he intends to deprive the tenants of their privacy; the mesh door makes the room unusable for any purpose other than storage; and the tenants cannot heat the room and no covering they could erect would allow them to do so.

MSC: To recuse Commissioner Crow from consideration of this appeal.
(Murphy/Gruber: 5-0)

Due to the absence or refusal of three Tenant Commissioners, the Board continued consideration of this appeal to the next meeting.

H. 1995 Chesnut #208

AL120023

The tenant's petition alleging decreased housing services due to the change from covered to uncovered garage parking was granted and the landlord was found liable to the tenant in the amount of \$30.00 per month. The landlord appeals, arguing that the doctrine of collateral estoppel applies, because it was determined in a prior Rent Board decision that covered garage parking was not included in the tenant's rent at the inception of the tenancy.

MSC: To deny the appeal. (Marshall/Crow: 5-0)

I. 3435 A 20th St.

AL120025

The tenant's petition alleging a substantial decrease in housing services due to the change from landlord provided to tenant paid gas service for hot water was granted and the landlord was found liable to the tenant in the amount of \$36.31 per month. On appeal, the landlord claims that: the Decision contains factual errors, including as to the number of occupants in the subject unit; the ALJ gave the impression that it was not necessary for the landlord to provide additional information during the open record period; other tenants, and not the landlord, previously paid for hot water to the building; the tenant's lease and estoppel certificate require him to pay for utilities; the tenant's bills were low because he disconnected his heat; and the tenant is being rewarded for having too many occupants in the unit; and the amount granted is in excess of the tenant's actual costs.

MSC: To deny the appeal. (Marshall/Crow: 5-0)

J. 2065 Fulton

AL120028

The tenants' petition alleging an unlawful increase in rent was granted and the landlord was found liable to the tenants in the amount of \$825.00. The ALJ found that, pursuant to the contract between the parties, the landlord could terminate services being provided by the tenants but, as long as the tenants were still willing to provide the services, they were entitled to a \$275.00 monthly rent credit. On appeal, the landlord claims that: there was no rent increase but, rather, restoration of the prior base rent amount upon termination of the tenants' employment; the tenants coerced the landlord into agreeing to the clause in the

lease, which was drafted by the tenants; the tenants were employed at will, because the duration of their employment was not specified in the contract, which must shift the rent payment from cash and services to all cash; the death of the landlord terminated the tenants' employment; and the Decision provides for an unfair result.

MSC: To accept the appeal and remand the case to have the Administrative Law Judge evaluate whether the contract provision regarding the rent credit is enforceable; a hearing will be held only if necessary. (Beard/Murphy: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A Pending Litigation Status Report from Senior ALJ Tim Lee.

B. An updated Commissioner roster.

C. Articles from the S.F. Examiner, the Bay Citizen, the S.F. Daily Journal, and the N.Y. Times.

VII. Director's Report

Executive Director Wolf reminded the Commissioners that their Form 700 Statements of Economic Interest are due by April 1st. Senior ALJ Tim Lee told the Board about the Santa Monica Properties v. Santa Monica Rent Control Board case, which holds that in the case of "adult recreational housing services of a kind normally found only in luxury housing," a reduction in services warrants a rent decrease only when there is some sort of showing that the reduction has made the rent excessive or given the landlord an unfairly high return. The San Francisco Rent Ordinance does not have a fair return standard, and contains a "substantiality" requirement for decreased housing services.

VIII. Calendar Items

April 24, 2012

10 appeal considerations (1 cont. from 3/27/12)

IX. Adjournment

President Gruber adjourned the meeting at 7:17 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.

Addendum: Any summary statements are provided by the speaker and appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy by the San Francisco Rent Board.



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Edwin M. Lee
Mayor

Delene Wolf
Executive Director

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, April 24, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

04-19-12P01-22 RCVD

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 789 Carolina #9 AL120036 thru -38

The landlord appeals the remand decision granting claims of financial hardship.

B. 789 Carolina #5 AL120033 thru -35

The landlord appeals the remand decision partially granting claims of financial hardship.

C. 1238 - 4th Ave. AT120030

The subtenant appeals the decision denying a claim that she paid a disproportional share of the rent pursuant to Rules §6.15C(3).

D. 1849 McAllister AT120029

One tenant appeals the decision granting rent increases based on increased operating expenses.

E. 630 Jones #4 AL1200312

The landlord appeals the decision granting a claim of unlawful rent increase.

F. 410 Shrader #3

AL120039

The landlord appeals the decision granting a claim of decreased housing services.

G. 743 Grove #2

AT120022

(cont. from 3/27/12)

The tenants appeal the remand decision finding that housing services have been restored.

H. 1655-1/2 A Mason

AL120040

The landlord appeals the decision granting a claim of decreased housing services on the grounds that the Golden Gateway decision bars relief.

I. 75 Hancock #3

AL120041

The landlord appeals the decision granting claims of decreased housing services and unlawful rent increases.

J. 310 – 30th Ave.

AT120042

The tenant appeals the decision finding that a rent increase is warranted pursuant to Costa-Hawkins.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, April 24, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Gruber called the meeting to order at 6:06 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Mosbrucker; Mosser; Qian.
Commissioners not Present: Beard; Hurley.
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:09 p.m.; Commissioner Murphy arrived at the meeting at 6:15 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 27, 2012.
(Crow/Gruber: 5-0)

IV. Remarks from the Public

A. Attorney Richard Grabstein, representing the landlord in the case at 1655-1/2A Mason (AL120040), told the Board that the Golden Gateway decision doesn't apply in this case because all of the work was done by a neighbor, and not the landlord. Mr. Grabstein said that the work was not done in a timely or reasonable manner, and is still going on after two years. He asked that the Board not extend Golden Gateway.

V. Consideration of Appeals

A. 789 Carolina #9

AL120036 thru -38

The tenant's hardship appeals of three decisions certifying capital improvement costs were granted. The landlord appeals, claiming that: the tenant is single and living in a large, two-bedroom apartment; the tenant is charging his subtenant a disproportional share of the rent; the subtenant's income should also be considered; a prior capital improvement passthrough has also expired; even without the approved passthroughs, the unit is too expensive for the tenant; and the landlord should not have to subsidize the tenant's lifestyle.

MSC: To deny the appeal. (Mosbrucker/Marshall: 4-1; Gruber dissenting)

B. 789 Carolina #5

AL120033 thru -35

The tenant appealed three decisions certifying capital improvement costs. The Administrative Law Judge (ALJ) found sufficient hardship to warrant deferral of one of the passthroughs in the amount of \$30.68 per month. The landlord appeals on the grounds that: the tenant has sufficient assets to pay the passthroughs; the tenant's monthly expenses could be reduced; the tenant voluntarily retired early; and the tenant could live in a house he owns free and clear in another county.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge on the record with instructions to vacate the decision and deny the tenant's hardship appeals. (Murphy/Gruber: 5-0)

C. 1238 – 4th Ave.

AT120030

The subtenant's petition claiming that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was denied. However, a claim of decreased housing services was granted and the Master Tenant was found liable to the subtenant in the amount of \$100.00 due to temporary loss of the common area living room. The subtenant appeals, claiming that: the Master Tenant now has a balanced payment plan which could affect the liability for PG&E charges; she has contributed to the phone bill without having phone service; she now cleans the unit, which should balance out the amount the Master Tenant pays for professional cleaning services; and furniture that was previously provided has been removed.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

D. 1849 McAllister

AT120029

The landlords' petition for rent increase based on increased operating expenses was granted, resulting in a 7% base rent increase to the tenant in one of three units. The tenant appeals on the grounds that: the ALJ erred in allowing the landlord to choose cost categories and a time period that would be most favorable for approval of the petition, creating exaggerated results; the landlords' expenses have actually decreased in the past two years; and her base rent includes an unlawful rent increase and the operating expense increase should be recalculated accordingly.

MSC: To accept the appeal and remand the case on the issue of the proper base rent for purposes of calculation of the operating and maintenance expense increase and recalculation of that increase, if necessary; to deny the appeal as to all other issues. (Marshall/Mosbrucker: 5-0)

E. 630 Jones #4

AL120031

The tenant's petition alleging an unlawful increase in rent from \$620.18 to \$1,100.00 was granted because the ALJ found that the landlord had failed to prove that a \$6.14 notice was timely served on the tenant. On appeal, the landlord argues that: the notice in the tenant's file sufficiently complies with the requirements of Rules §6.14; and the existence of the document in the file demonstrates that the landlord approved of the subtenant with the proviso that the rent could be raised once the last original occupant vacated the premises.

Prior to the meeting, the Board received notification that the parties had settled and wished to withdraw the petition and appeal. Therefore, the Board passed the below motion.

MSC: To accept the appeal, vacate the decision and allow the withdrawal of the tenant's petition and landlord's appeal pursuant to the settlement agreement reached by the parties. (Murphy/Gruber: 5-0)

F. 410 Shrader #3

AL120039

The tenant's petition alleging decreased housing services due to the lack of a functional mailbox was granted and the landlord was found liable to the tenant in the amount of \$75.00 per month. On appeal, the landlord claims that: the lease between the parties provides that the landlord is not responsible for an interruption of services caused by an outside party and is held harmless unless he is negligent; the cost of a post office box is significantly less than determined in the decision; the tenants failed to assist the owner in obtaining cooperation from the postal service; there are factual errors in the decision; and the tenants were not truthful at the hearing.

MSC: To deny the appeal. (Mosbrucker/Marshall: 3-2;
Gruber, Mosser dissenting)

G. 743 Grove #2

AT120022
(cont. from 3/27/12)

The tenants' petition alleging decreased housing services was granted in part and denied in part. Pursuant to the tenants' appeal, the case was remanded to grant a rent reduction in the amount of \$497.00 until a locking door and electricity were restored to a downstairs room in the unit. On remand, the ALJ found that the services had been sufficiently restored. The tenants appeal the remand decision, arguing that: a mesh door is not comparable to a solid wood door and constitutes a substantial decrease in services; the landlord admitted that he intends to deprive the tenants of their privacy; the mesh door makes the room unusable for any purpose other than storage; and the tenants cannot heat the room and no covering they could erect would allow them to do so. Due to the absence

or recusal of three Tenant Commissioners, the Board continued consideration of this appeal from the March 27th meeting.

MSF: To accept the appeal and remand the case to the Administrative Law Judge to grant the full \$497 rent reduction until a door is provided that blocks sound and retains heat. (Marshall/Mosbrucker: 2-3; Gruber, Murphy, Dandillaya dissenting)

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Marshall, Mosbrucker dissenting)

H. 1655-1/2 A Mason

AL120040

The tenants' petition alleging decreased housing services due to the temporary loss of use of the back yard garden was granted and the landlords were found liable to the tenants in the amount of \$100.00 per month until the garden is restored. The ALJ also found that the Golden Gateway defense is inapplicable to this case because the work was performed by the neighboring landlord's contractor and not the tenant's landlord or his agents. The landlords appeal on the grounds that: Golden Gateway applies, because they meet the definition of landlord in that decision; the tenant caused the work to be performed, delayed its completion and should not be rewarded with a rent reduction; and the tenant did not meet her burden of proof.

MSC: To deny the appeal. (Marshall/Mosbrucker: 3-2; Gruber, Murphy dissenting)

I. 75 Hancock #3

AL120041

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$14,851.60 due to rent overpayments. Additionally, the landlord was found liable to the tenant in the amount of \$3,641.82 due to the landlord's revocation of the tenant's right to sublet. The landlord appeals the decision on the grounds that the ALJ's decision materially erred in points of law and fact and constitutes an abuse of discretion.

This appeal was withdrawn prior to the meeting.

J. 310 – 30th Ave.

AT120042

The tenant's appeal was filed one day late because the tenant's four children were out of school for Spring Break and the tenant works part-time and goes to school.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Mosbrucker: 5-0)

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the increase was warranted under Costa-Hawkins since the last original occupant no

longer permanently resides on the premises and the lawful subtenants moved in to the unit after January 1, 1996. The tenant appeals, claiming that: the landlord failed to meet his burden of proving that the original tenant no longer permanently resides in the unit; the unit is the original tenant's usual place of return and he intends to eventually reside there again; and unforeseen circumstances have required the original tenant's prolonged absence from the unit.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the months of February and March, 2012.

B. The appellate decision in the case of Crisales v. Estrada, in which the court found that a Section 8 tenancy could not be terminated for "business or economic reason," but must comply with the Just Cause requirements of the Los Angeles Rent Stabilization Ordinance.

C. Articles from CBS News, the Wall Street Journal and BeyondChron.

VII. Director's Report

Executive Director Wolf told the Board that the U.S. Supreme Court declined to take up a challenge to rent control raised by a New York landlord. She also let the Commissioners know that Rent Board staff will be conducting training for Housing Authority staff on rent increase limitations and Just Cause eviction protections for Section 8 tenants. Senior ALJ Tim Lee told the Board that the landlord's writ in the case of Morris v. S.F. Rent Board was denied because the Judge found that the tenant's decrease in services claim at the Rent Board and a pending trial court action filed by the landlord did not consider the same subject matter.

IV. Remarks from the Public (cont.)

B. Marissa Marjone told the Board that her father is a Pacific Heights homeowner who lives above a rent-controlled unit. Ms. Majone has a problem with her father not being able to charge his tenant market rent and said that "tenants have too much power."

VIII. Calendar Items

May 22, 2012
9 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:15 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.



05-17-12 13:18 RVD

Edwin M. Lee
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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, May 22, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 566 Fell #5

AT120047

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 755 Burnett #7

AT120051 & -52

The tenant appeals two decisions certifying capital improvement costs on the grounds of financial hardship.

C. 2801 Greenwich

AL120043

The landlord appeals the decision granting claims of decreased housing services.

D. 312 – 30th Ave.

AT120048

The tenants appeal the decision partially granting claims of decreased housing services.

E. 64 Barcelona Ave.

AL120050

The landlord appeals the decision granting a claim of unlawful rent increases.

F. 508 Larkin #508

AT120046

The tenant appeals the decision granting his claim of decreased housing services.

G. 925 Geary #205

AL120049

The landlord appeals the decision granting a claim of decreased housing services.

H. 376 San Carlos

AT120045

The tenant appeals the decision denying his claim of unlawful rent increases.

I. 725 Sanchez

AT120044

The tenant appeals the decision finding that the Rent Board lacks jurisdiction over this single family dwelling due to Costa-Hawkins.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

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I. Call to Order

Vice-President Marshall called the meeting to order at 6:07 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Hurley; Marshall; Mosbrucker; Qian.
Commissioners not Present: Beard; Gruber; Mosser; Murphy.
Staff Present: Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of April 24, 2012.
(Mosbrucker/Hurley: 4-0)

IV. Remarks from the Public

A. Attorney Marilyn Kalman, representing the tenant at 376 San Carlos (AT120045), told the Board that this is a case of "factual disputes." She said that the tenant, who was not represented at the hearing, found the Estoppel Certificate confusing. Ms. Kalman would like to "bring the facts before the Board for a proper evaluation."

B. Anthony Lewis of 508 Larkin #508 told the Board that he is disabled with lung disease. The elevator has been out in his building for two years and other tenants settled with the landlord for a 15% rent reduction. Mr. Lewis believes he deserves a greater amount because his need is greater, and he goes in and out of the building more frequently, but the Administrative Law Judge granted him a slightly lesser amount.

C. The landlord in the case at 2801 Greenwich (AL120043) told the Board that she did not get a fair hearing and asked for a second chance or further review. She said that she provided all the supporting documentation to prove her version of the facts.

D. Michael Mulladey told the Board that he is the grandson of the owner of the building at 376 San Carlos (AT120045) and that the case is a classic "he said, she said." Mr. Mulladey said that the tenant provided unsupported facts and made untrue statements, including that Mr. Mulladey had moved out of the building when he had not.

V. Consideration of Appeals

A. 566 Fell #5

AT120047

The landlords' petition for certification of capital improvement costs to 11 of 16 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Mosbrucker/Hurley: 4-0)

B. 755 Burnett #7

AT120051 & -52

The landlord's petitions for certification of capital improvement costs to 10 of 12 units were granted. The tenant in 1 unit appeals the decisions on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases for a hearing on the tenant's claims of financial hardship. (Mosbrucker/Hurley: 4-0)

C. 2801 Greenwich

AL120043

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,136.00 due to habitability defects on the subject premises. The landlord appeals, claiming that: the tenant caused much of the damage to the unit; the tenant failed to give the landlord notice of the needed repairs; the tenant is not credible and made up the complaints to get out of his lease without losing his security deposit; the tenant failed to pay rent in a timely manner; and the tenant and his attorney threatened and harassed the landlord.

MSC: To deny the appeal. (Mosbrucker/Marshall: 3-1; Hurley dissenting)

D. 312 – 30th Ave.

AT120048

The tenants' appeal was filed six months late because the tenants believed that their landlord was making good faith attempts to remedy the noise problem from a downstairs unit.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Mosbrucker: 4-0)

The tenants' petition alleging decreased housing services and the landlord's failure to repair was granted only as to a bathroom in disrepair and the landlord was found liable to the

tenants in the amount of \$567.00. The tenants appeal on the issue of alleged noise from a downstairs unit, which they contend the landlord has failed to address.

MSC: To deny the appeal. (Hurley/Dandillaya: 4-0)

E. 64 Barcelona Ave.

AL120050

The tenants' petition alleging unlawful rent increases was granted and the landlord was found liable to the tenants in the amount of \$6,059.24. On appeal, the landlord agrees that she made a minor mistake in the calculation of banked increases in 2008, but argues that the responsibility should be shared by both parties since the tenant agreed to the increase and also did not notice the calculation error.

MSC: To deny the appeal. (Mosbrucker/Hurley: 4-0)

F. 508 Larkin #508

AT120046

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$2,307.00 due to an inoperable elevator and reduced laundry room hours. On appeal, the tenant claims that: other tenants who live on the same floor in the building received a larger rent reduction pursuant to a settlement agreement with the landlord; and the tenant is older and disabled and should have received a higher, not lower, amount than the other tenants.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record with instructions to grant the tenant a rent reduction in the amount of \$150.00 per month due to the inoperable elevator.
(Mosbrucker/Dandillaya: 4-0)

G. 925 Geary #205

AL120049

The landlord's appeal was filed eleven days late because the landlord's representative was tasked with other duties and was unable to compile and file the appeal during the specified timeframe.

MSF: To find no good cause for the late filing of the appeal.
(Mosbrucker/Marshall: 2-2; Dandillaya, Hurley dissenting)

MSC: To find good cause for the late filing of the appeal. (Hurley/Dandillaya: 3-1; Mosbrucker dissenting))

The tenant's petition alleging decreased housing services due to the presence of bedbugs and other habitability problems in his unit was granted and the landlord was found liable to the tenant in the amount of \$1,750.00. The landlord appeals on the grounds that: the landlord proved that the bedbugs had been eliminated by the time of the hearing; and the

Notice of Violation has not been abated because of a lack of cooperation on the part of the Department of Building Inspection.

MSC: To deny the appeal. (Mosbrucker/Marshall: 4-0)

H. 376 San Carlos

AT120045

The tenant's petition alleging unlawful rent increases was denied. On appeal, the tenant claims that: rental of two storage rooms in the basement of the building were included in his initial base rent; the tenant acquired use of the garage in 2003 for an additional \$50 charge; the landlord's heirs were not involved in management of the property while the landlord was alive, and are unfamiliar with the particulars of the tenant's rent history; and the landlord's post-hearing submissions contained false representations.

MSC: To accept the appeal and remand the case for a supplemental hearing in order for the Administrative Law Judge to re-consider the issue of the Estoppel Certificate and whether storage was included in the tenant's base rent at the inception of the tenancy. (Mosbrucker/Hurley: 4-0)

I. 725 Sanchez

AT120044

The tenant's petition alleging an unlawful rent increase, decreased housing services and the landlord's failure to repair was denied because the ALJ found that the subject unit is an exempt single family dwelling pursuant to Costa-Hawkins. The tenant appeals on the grounds that: the legislative intent of the Costa-Hawkins Rental Housing Act was that vacancy decontrol should only apply if the previous tenant voluntarily vacated the unit; and an exception to Costa-Hawkins exists if there were long standing code violations on the premises prior to the time the vacancy was created.

After discussion, it was the consensus of the Board to continue consideration of this appeal to a future meeting.

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A copy of proposed Assembly Bill 1925, introduced by Assemblywoman Ma. This legislation, if passed, would preempt Ordinance §37.9C with regard to the amount of relocation payments required for a temporary eviction of a tenant for less than 20 days for capital improvement work.

B. Articles from BeyondChron, the Small Property Owners of San Francisco newsletter (SPOSFInews), Mission Local, the S.F. Chronicle, and the S.F. Apartment Magazine.

VII. Director's Report

Executive Director Wolf told the Board that there have been several fires lately that have displaced a large number of tenants but, since the rental market is in an extremely overheated phase, there is little incentive for "good Samaritan" landlords to offer below market rate housing. She also informed them that she would be going before the Budget Committee of the Board of Supervisors on May 23rd for a hearing on the Department's proposed budget.

VIII. Calendar Items

July 17, 2012

9 appeal considerations (1 cont. from 5/22/12)

IX. Adjournment

Vice-President Marshall adjourned the meeting at 7:20 p.m.

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DAVE CROW
SHOBA DANDILAYA
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, July 17, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 2597 Pine

AT120056

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 1690 Broadway #407 & 414

AT120059 & -61

Two tenants appeal the decision certifying capital improvement costs on the grounds of financial hardship.

C. 1050 Post #14

AT120057

The tenants appeal the dismissal of their petition alleging decreased housing services due to their failure to appear at the hearing.

D. 4114 - 17th St.

AL120064 & AT120065

The Master Tenant and subtenant both appeal the decision finding that the subtenant paid a disproportional share of the rent pursuant to Rules §6.15C(3).

E. 3835 Scott #202

AT120067

The tenant appeals the decision finding that the Rent Board has no jurisdiction over the subject premises.

F. 1421 Ingalls St.

AL120060

The landlord appeals the decision granting claims of unlawful rent increase and decreased housing services.

G. 1750 – 25th Ave.

AL120055

The landlords appeal the decision granting claims of decreased housing services.

H. 16 Laguna #103

AT120053 & -54

The tenant appeals the decision granting a rent increase based on comparable rents.

I. 48 Haight St.

AT120058

The tenant appeals the decision denying a claim of unlawful rent increase.

J. 376 San Carlos #4

AL120062

The landlord appeals the decision granting claims of unlawful rent increase and decreased housing services.

K. 725 Sanchez

AT120044
(cont. from 5/22/12)

The tenant appeals the determination that the subject unit is exempt from Rent Board jurisdiction pursuant to Costa-Hawkins.

L. 22 Short St.

AL120063

The landlord appeals the determination that the subject unit is not exempt under Costa-Hawkins.

M. 1335 Union #7

AL120066

The landlord appeals the decision granting claims of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

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X. Calendar Items

XI. Adjournment

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Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Robert Collins has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) assures that deliberations are conducted before the people and that City operations are open to the people's review.

For information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact the Administrator by mail to: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102; by phone at (415) 554-7724; by fax at (415) 554-7854; or by email at sott@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance from the Administrator or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, found at <http://www.sfbos.org/sunshine>.



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Mayor

Delene Wolf
Executive Director

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, July 17, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Gruber called the meeting to order at 6:01 p.m.

II. Roll Call

Commissioners Present: Beard; Dandillaya; Gruber; Hurley; Mosbrucker;
Mosser; Qian.
Commissioners not Present: Crow; Marshall; Murphy.
Staff Present: Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of May 22, 2012.
(Hurley/Qian: 5-0)

IV. Remarks from the Public

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A. Attorney Michael Rossoff, representing the landlord in the case at 22 Short Street (AL120063), told the Board that Costa-Hawkins supersedes local rent control and the Rent Board has no jurisdiction over single-family homes. Mr. Rossoff said that the Board should re-write Rules §11.18 and place the burden of proof on the tenant in a Costa-Hawkins case.

B. Vanessa Polgar, the daughter of the landlord in the case at 725 Sanchez (AT120044), asked that the Board uphold the decision of the Administrative Law Judge (ALJ). Ms. Polgar told the Board that the previous tenants were not evicted from the unit, constructively or otherwise, and that there were no outstanding Notices of Violation when the tenant took occupancy in 2008.

C. Debby Pappas, the tenant in the case at 16 Laguna #103 (AT120053 & -54), told the Board that the ALJ granted a comps increase but overlooked the fact that the apartment

had been vacant for two months, so market rent was not feasible. Ms. Pappas said that the increase is punitive and presents a hardship; she will be forced to move if the decision is not overturned, because rents in San Francisco are extremely high.

D. Tenant Silk Gaudin of 48 Haight Street (AT120058) told the Board that her landlord gave her a rent increase in 2002 and then attempted to "bank" and impose the same increase in 2008. Ms. Gaudin said that another tenant in the building also filed a petition, but the other tenant won his case. Ms. Gaudin maintained that the Board shouldn't condone an owner banking rent increases from a prior landlord.

E. Attorney Daniel Bornstein, representing the landlord in the case at 725 Sanchez, said that the ALJ was presented with a "cumbersome" Costa-Hawkins issue, and got it right. Mr. Bornstein asked that the Commissioners uphold the decision.

V. Consideration of Appeals

A. 2597 Pine

AT120056

The landlords' petition for certification of capital improvement costs connected to remodeling of the subject unit was granted, resulting in a monthly passthrough in the amount of \$83.66. The tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Mosbrucker/Hurley: 5-0)

B. 1690 Broadway #407 & 414

AT120059& -61

The landlord's petition for certification of capital improvement costs to 43 of 80 units was granted, resulting in a monthly passthrough in the amount of \$75.73. Two tenants appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases for hearings on the tenants' claims of financial hardship (Mosbrucker/Hurley: 5-0)

C. 1050 Post #14

AT120057

The tenant's petition alleging decreased housing services was dismissed due to the tenant's failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received notice of the hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Hurley/Mosbrucker: 5-0)

D. 4114- 17th St.

AL120064 & AT120065

The tenant's petition alleging that he paid a disproportional share of the rent was granted and the Master Tenant was found liable to the subtenant petitioner in the amount of \$4,880.63. The Master Tenant appeals the decision on the grounds of financial hardship. The subtenant also appeals, claiming that: \$30 is an excessive valuation of the furnishings provided by the Master Tenant; and the 3-year Statute of Limitations on overpayments in the Ordinance prevents him from collecting all of the amounts he has been overcharged.

MSC: To deny both the Master Tenant's and subtenant's appeals but to make the services of a Rent Board Administrative Law Judge available if the parties wish to mediate a repayment plan. (Mosbrucker/Hurley: 5-0)

E. 3835 Scott St. #202

AL120067

The landlord filed a petition requesting a determination regarding Rent Board jurisdiction over the subject unit. The ALJ found that the unit is a Below Market Rate Condominium unit, which is exempt because the Mayor's Office of Housing regulates the rents. The tenant appeals, arguing that because the Rent Board lacks jurisdiction over this property, it could not grant or deny the landlord's petition.

MSC: To deny the appeal. (Mosbrucker/Hurley: 5-0)

F. 1421 Ingalls St.

AL120060

The tenants' petition alleging an unlawful rent increase and decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$690.00 due to rent overpayments and \$1,450.00 for the loss of a roof deck and driveway parking. The owner failed to attend the hearing and claims on appeal not to have received the Notice of Hearing. The owner also appeals on the grounds that he is not the landlord and has no privity of estate with the tenants, who are actually subtenants.

MSC: To accept the appeal and remand the case for a new hearing.
(Mosbrucker/Hurley: 5-0)

G. 1750 – 25th Ave.

AL120055

The tenants' petition alleging decreased housing services was granted and the landlords were found liable to the tenants in the amount of \$912.50 due to lack of heat and rodent infestation. The landlords appeal, maintaining that: the heating system is in working order and the tenants failed to mention this alleged problem to the building inspector or the landlords; no other tenants in the building have complained about mice on the premises; the tenants' food storage practices encourage the presence of vermin; the tenants agreed that the unit was habitable at the inception of the tenancy; the tenants made up the alleged problems in order to have an excuse to break their lease; and the amounts granted are not reasonable.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

H. 16 Laguna #103

AT120053 & -54

The landlord's petition for a rent increase based on comparable rents was granted. The ALJ found that an increase from \$1,600.00 to \$1,989.00 was warranted because the original rent was set low due to the employment relationship between the prior landlord and the tenant. On appeal, the tenant claims that: the initial rent reflected a market downturn at the time and the poor condition of the unit; while the initial rent may have been lower than prevailing market, it was not set very low, which is required by the regulation; and the rent increase presents the tenant with a financial hardship.

MSC: To deny both the tenant's substantive and hardship appeals.
(Hurley/Gruber: 3-2; Mosbrucker, Qian dissenting)

I. 48 Haight St.

AT120058

The tenant's petition alleging unlawful rent increases was denied. On appeal, the tenant claims that the landlord had already imposed an annual increase in 2002 and should not have been allowed banking for that year.

MSC: To deny the appeal. (Hurley/Gruber: 5-0)

J. 376 San Carlos #4

AL120062

The tenant's petition alleging unlawful rent increases and decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$641.45 due to rent overpayments and \$901.91 for habitability defects on the premises. The landlord appeals, claiming that: the tenant refused to provide access in order for the landlord to repair the heater, and said that the heater was working; the water pressure issue was resolved in a timely manner; the windows and sashes have been fixed; and the tenant's evidence regarding her rent history was not credible.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

K. 725 Sanchez

AT120044
(cont. from 5/22/12)

The tenant's petition alleging an unlawful rent increase, decreased housing services and the landlord's failure to repair was denied because the ALJ found that the subject unit is an exempt single family dwelling pursuant to Costa-Hawkins. The tenant appeals on the grounds that: the legislative intent of the Costa-Hawkins Rental Housing Act was that vacancy decontrol should only apply if the previous tenant voluntarily vacated the unit; and an exception to Costa-Hawkins exists if there were long standing code violations on the premises prior to the time the vacancy was created. The Board continued consideration of this appeal from the May 22nd meeting.

MSC: To deny the appeal. (Hurley/Gruber: 3-2; Mosbrucker, Qian dissenting)

L. 22 Short St.

AL120063

The tenants' petition alleging an unlawful rent increase from \$3,000 to \$4,000 per month was granted because the ALJ found that the subject building has two residential units and is not exempt as a separately alienable single family dwelling under Costa-Hawkins. On appeal, the landlords argue that: the ALJ should not have relied on a prior use of the premises, out of date City records and erroneous realtor's ads; the building was rented to the tenants in its entirety; and the current 3R Report has a single family designation.

MSC: To deny the appeal. (Mosbrucker/Qian: 3-2; Gruber, Hurley dissenting)

M. 1335 Union #7

A120066

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$503.75 due to the removal of the garbage disposal in the unit and a mildew problem in the bathroom. The landlord appeals, claiming that: the tenant caused the problem with the garbage disposal by failing to use it appropriately; there are factual errors in the decision; relevant evidence from a prior Rent Board proceeding should have been allowed; the tenant failed to notify the landlord of the mildew problem, which she caused; the mildew problem was remediated within a reasonable amount of time; and the landlord should have been provided with documentation submitted by the tenant.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The Board's Annual Report on Eviction Notices.

B. The office workload statistics for the month of May, 2012.

C. A copy of the Proposed Order Granting the Rent Board's Motion for Judgment on the Pleadings and Demurrer in the case of Foster v. S.F. Rent Board (Superior Court Case No. CGC-11-514035).

D. Articles from BeyondChron, the S.F. Chronicle, the S.F. Bay Guardian, the Mayor's Office of Communications, and berkeleyside.com.

VII. Director's Report

Executive Director Wolf reported that the departmental budget had been thoroughly vetted and approved by the Budget Committee of the Board of Supervisors. Senior ALJ Tim Lee told the Board that the court in the Foster case found that Rules §12.20 is not preempted by State law, but there is no final decision in the case because there is an outstanding issue regarding Rules §6.15C(3).

IV. Remarks from the Public (cont.)

F. The tenant at 22 Short Street said that the Tax Assessor shows the property having two units; the downstairs unit had a stove and refrigerator with separate doorbells and entrances; and someone resided there for an extended period of time.

G. Tenant Silk Gaudin alleged that Rent Board staff had not explained banking to her. She maintained that the tenant in case number T110947 was granted almost \$3,000 for the exact same situation and claimed bias against her.

VIII. Calendar Items

August 28, 2012

12 appeal considerations

IX. Adjournment

President Gruber adjourned the meeting at 7:10 p.m.

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Executive Director

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, August 28, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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V. Consideration of Appeals

A. 1755 Van Ness #202 & 606

AT120075

Two tenants appeal the decision certifying capital improvement costs on the grounds of financial hardship.

B. 1574 Jackson #4

AT120073

The tenant appeals the decision granting a Costa-Hawkins rent increase alleging non-receipt of notice of hearing.

C. 30 Grand View Terr., Unit 1

AL120080

The landlord appeals the decision granting a claim of unlawful rent increases.

D. 560 Douglass

AL120077

The landlord appeals the decision granting a claim of unlawful rent increases

E. 2511 - 47th Ave.

AT120070

The tenants appeal the decision denying their claim of decreased housing services.

F. 1849 McAllister

AT120074

The tenant appeals the decision denying a claim of unlawful rent increase.

G. 3116-23rd St. #A

AL120069

The landlord appeals the decision finding that there are "Tenants in Occupancy" in the subject unit.

H. 2731 Folsom

AL120068

The landlord appeals the decision granting a claim of decreased housing services.

I. 24 Wentworth St. #17

AT120076

The tenants appeal the decision finding that the subject unit is not their principal place of residence.

J. 1290 Grove #302

AT120079

The landlord of a Section 8 unit appeals the decision granting a claim of unlawful rent increases.

K. 1665 Green St.

AT120081

The tenant appeals the decision granting a rent increase based on comparable rents.

L. 25 Glendale #2

AL120082

The landlords appeal the decision mostly denying certification of capital improvement costs.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

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IX. New Business

X. Calendar Items

XI. Adjournment

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Robert Collins has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) assures that deliberations are conducted before the people and that City operations are open to the people's review.

For information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact the Administrator by mail to: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102; by phone at (415) 554-7724; by fax at (415) 554-7854; or by email at sotf@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance from the Administrator or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, found at <http://www.sfbos.org/sunshine>.



DAVID GRUBER
PRESIDENT

BROOKS BEARD
DAVE CROW
SHOBA DANDILLAYA
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, August 28, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

GOVERNMENT
DOCUMENTS DEPT

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I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Gruber; Hurley; Mosbrucker; Mosser;
Murphy; Qian.
Commissioners not Present: Dandillaya; Marshall.
Staff Present: Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of July 17, 2012.
(Qian/Hurley: 5-0)

IV. Remarks from the Public

A. Attorney Ryan Vilasik told the Board that he was just retained by the tenants at 1665 Green (AT120081) this morning, and asked for another 30-60 days to supplement their appeal. Attorney Vilasik said that there was an incident at the property concerning carbon monoxide exposure, along with other habitability issues.

B. Attorney Daniel Stern, representing the landlord in the Green Street case, told the Board that in a case concerning comparable rents, habitability is irrelevant; market rent at the inception of the tenancy is the only issue.

C. John McKeon, the tenant in the case at 1574 Jackson #4 (AT120073), asked the Board to give him another chance to prove that he is a tenant. Mr. McKeon said that he did not receive the Notice of Hearing and requested that the case be re-opened.

D. A young woman spoke on behalf of her mother, a monolingual Chinese speaker, and the appellant in the case at 24 Wentworth Street (AT120076). She explained that the tenants did not understand the law at the time of the hearing; said that the owner said things at the hearing that are not true; and maintained that her mother has lived in the unit for 28 years.

E. The manager at 24 Wentworth said that the tenants have purchased a house and never use the unit; maintained that the husband and wife live separately and are "cheating the government;" and claimed that the tenants are "taking advantage of the Rent Board."

V. Consideration of Appeals

A. 1755 Van Ness #202 & 606

AT120075 & -78

The landlord's petition for certification of capital improvement costs to 36 of 48 units was granted. Two tenants appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases for hearings on the tenants' claims of financial hardship. (Qian/Mosbrucker: 5-0)

B. 1574 Jackson #4

AT120073

The landlord's petition requesting a Costa-Hawkins determination was granted and a rent increase from \$530.00 to \$2,400.00 per month was found to be warranted. The tenant failed to appear at the hearing and submits on appeal a Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Qian/Mosbrucker: 5-0)

C. 30 Grand View Terr., Unit 1

AL120080

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$8,874.50. The landlord appeals, arguing that: the tenant was just questioning his most recent rent increase, and the ALJ should not have gone back to the inception of the tenancy to check the rent history; the increases were made in good faith; there are discrepancies in the information disseminated by the Rent Board; and the Statute of Limitations in the Ordinance precludes going back more than three years for rent refunds.

This appeal was withdrawn prior to the meeting.

D. 560 Douglass

AL120077

The tenants' petition alleging unlawful rent increases was granted and the landlord was found liable to the tenants in the amount of \$20,707.72. The landlord appeals on the grounds that he did not receive credit for annual increase amounts that he was entitled to and he should be able to bank an additional year's increase going forward.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

E. 2511-47th Ave.

AT120070

The tenants' petition alleging decreased housing services was denied because the ALJ found that the alleged problems were not substantial and that the landlord responded reasonably. On appeal, the tenants object to the landlord's evidence as unverifiable; claim that the ALJ relied on the landlord's false testimony at the hearing; and maintain that their due process rights were violated in that they were not given the opportunity to respond to the landlord's post-hearing submission.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

F. 1849 McAllister

AT120074

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that a \$10.00 charge for permission to install laundry appliances in the unit constituted an additional housing service and subsequent rent increases were properly calculated on the new base rent, including the additional \$10.00. On appeal, the tenant claims that: the additional \$10.00 charge was assessed by the prior owner for increased water usage; and banked rent increases should be calculated on the base rent that was in effect at the time the rent increases could have been issued.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a necessary Technical Correction to the Decision.
(Murphy/Gruber: 4-1; Qian dissenting)

G. 3116-23rd St. #A

AL120069

The landlord filed a petition seeking a determination as to whether two of the four occupants of the unit are "Tenants in Occupancy" as defined under §1.21 of the Rules and Regulations. The ALJ found that, since it is undisputed that there are two tenants who reside in the unit as their principal place of residence, there is no basis for deciding the status of the other occupants of the unit. The landlord appeals on the grounds that: it is a denial of equal protection for a landlord to be required to have only one principal place of residence for purposes of an owner-occupancy eviction, whereas a tenant can permanently reside in more than one unit; since the tenant who pays the garage rent should not be considered a Tenant in Occupancy, then the garage rental is commercial; and the requirement that housing services can only be removed with Just Cause should not be applied retroactively to this situation.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

H. 2731 Folsom

AL120068

The landlord's appeal was filed one day late, although the landlord mailed the documents in good faith with the expectation that they would arrive at the Board in a timely manner.

MSC: To find good cause for the late filing of the appeal.
(Murphy/Mosbrucker: 5-0)

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$13,640.00 due to serious habitability defects on the premises. The landlord appeals the decision on the grounds that damages were assessed for a period of time prior to their ownership of the property.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

I. 24 Wentworth St. #17

AT120076

The tenants' appeal was filed approximately three weeks late because the tenants are not native English speakers and spent time trying to obtain legal counsel.

MSC: To find good cause for the late filing of the appeal. (Mosbrucker/Qian: 5-0)

The landlord's petition for a determination pursuant to Rules §1.21 was granted because the ALJ found that none of the tenants use the unit as their principal place of residence. On appeal, the tenants claim that: the landlord's witnesses are biased on his behalf; the tenants did not request relocation compensation and there are other factual errors in the decision; and the landlord wants the tenants to vacate the unit.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

J. 1290 Grove #302

AT120079

The tenant's petition alleging unlawful rent increases in excess of the Section 8 Program's Payment Standard was granted and the landlord was found liable to the tenant in the amount of \$1,950.00. The landlord appeals on the grounds that: the Rent Board lacks jurisdiction over this case, which involves a contract between an agency of the U.S. government and the landlord; the tenant lacks standing to challenge the contract; indispensable parties to the dispute, including the San Francisco Housing Authority, were not represented; the Payment Standard is not dispositive because of the Bay Area's high housing costs; HUD has the discretion to approve higher exception rents; and the decision denies the landlord a fair return and violates his due process rights.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

K. 1665 Green St.

AT120081

The landlord's petition for a rent increase from \$1,720.48 to \$3,200.00 based on comparable rents was granted. The tenant appeals the decision, claiming that the ALJ relied primarily on the rent of another unit on the property, which was not established; the condition of the two units differs; and square footage does not accurately reflect a comparable rental rate.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

L. 25 Glendale #2

AL120082

The landlords' petition for certification of capital improvement costs to one unit was mostly denied as the ALJ found that the work was in the nature of repair, was the result of the landlords' deferred maintenance, was not necessary for reasons of health or safety, or the exact costs could not be ascertained. On appeal, the landlords provide a more detailed invoice from their contractor and claim that: they were not on notice of the problems with the flooring, nor would the costs have been less if the work had been done earlier; the bathroom work was necessitated in order to abate the NOV; several of the items were replaced due to safety concerns; the tenant requested that the window be replaced; the decision does not meet the substantial evidence test; and a decrease in services rent reduction would constitute double recovery by the tenant.

MSC: To accept the appeal and remand the case to the ALJ on the record with instructions to certify the costs of the carpet, the smoke detectors and outlets, and the ceiling fan. (Mosbrucker/Qian: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the months of June and July, 2012.

B. A Memorandum from the Office of the City Attorney regarding political activity by City officers and employees.

C. Articles from the S.F. Examiner, the S.F. Chronicle and BeyondChron.

VII. Calendar Items

October 16, 2012

11 appeal considerations (including 3 rescheduled from 9/18/12)

New Business: Assembly Bill 1925

VIII. Adjournment

President Gruber adjourned the meeting at 7:00 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.

Addendum: Any summary statements are provided by the speaker and appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy by the San Francisco Rent Board.



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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, October 16, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 2206 – 23rd St.

AT120094 & -95

The tenants appeal the decision granting a rent increase based on comparable rents on the grounds of hardship and substantive grounds.

B. 230 Central

AT120096 thru -0102

The tenants in eight units jointly appeal a decision granting rent increases based on increased operating expenses; one on the grounds of financial hardship.

C. 363 Mississippi

AT120085

The tenants appeal the decision granting certification of the costs of an exterior paint job.

D. 1053 Bush #5

AT120083
(rescheduled from 9/18/12)

The tenants appeal the decision denying their claim of decreased housing services.

E. 376 San Carlos #4

AT120084

(rescheduled from 9/18/12)

The tenant appeals the decision partially granting claims of unlawful rent increases and decreased housing services.

F. 775 Post #305

AL120091

The landlord appeals the decision finding that no rent increase is warranted under Costa-Hawkins because the petitioner is a tenant and not a subtenant.

G. 4078 – 24th St.

AT120086 & AL120090

The Master Tenant and subtenant appeal the decision granting a claim that the subtenant paid a disproportional share of the rent pursuant to Rules §6.15C(3).

H. 4002 – 19th St.

AT120087 thru -89

The tenants in three units appeal the decision certifying capital improvement costs.

I. 1109 Montgomery

AL120092

The landlord appeals the decision granting a claim of unlawful rent increase.

J. 90 Divisadero #18

AL120093

The landlord appeals the decision granting claims of decreased housing services.

K. 562 Fell

AT120103 & -04

The tenants appeal the decision finding that a rent increase is warranted under Costa-Hawkins.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

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ACCESSIBLE MEETING POLICY

Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4628 to place your specific request. Late requests will be honored if possible.

如果在開會前預早至少72小時提出申請，就可以使用我們的翻譯服務、音量增強服務或其他開會方式。如果你提出申請，我們也可以提供美式手語譯員。請致電252-4628向我們申請你想要的服務。如果遲了申請，我們會盡量安排。

Se pueden obtener servicios de traduccion, ampliacion de sonida, u otras formas de presentacion si se solicitan por lo menos 72 horas antes de la reunion. Llame al 252-4628 para hacer su solicitud.

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4628 at least 72 hours prior to the meeting.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. All MUNI Metro lines at Van Ness and Market Street are accessible. For other accessible MUNI lines serving this location and information about MUNI accessible services, call 3-1-1 from San Francisco or (415) 701-2311 from other areas.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

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City and County of San Francisco



Residential Rent Stabilization
and Arbitration Board

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

DAVID GRUBER
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KENT QIAN

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, October 16, 2012
at 6:00 p.m.
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hurley; Mosbrucker;
Mosser; Qian.
Commissioners not Present: Beard; Murphy.
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:05 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 28, 2012.
(Mosbrucker/Hurley: 5-0)

IV. Remarks from the Public

A. Tenant Sue MacNamee of 230 Central (AT120096 thru -0102) told the Board that a "property speculator" shouldn't be able to increase their profits off the backs of tenants. Ms. MacNamee said that the landlord had violated the housing code by not having an on-site manager, and that there are safety reasons for this requirement. Ms. MacNamee also maintained that the landlord had engaged in major construction work without permits, and was later forced to correct the violations. She said that the increase should at least be reduced by half, as the tenants put a lot of effort into their appeal.

V. Consideration of Appeals

A. 2206 – 23rd St.

AT120094 & -95

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The landlord's petition for a rent increase based on comparable rents was granted and the ALJ found that an increase from \$800 to \$3,080.00 was warranted. The tenants appeal the decision on the grounds of financial hardship and assert that the decision is unfair and the landlord is just trying to evict them.

MSC: To deny the tenants' hardship and merit appeals. (Hurley/Gruber: 4-1; Marshall dissenting)

B. 230 Central

AT120096 thru -0102

The tenants' appeals were filed 4 days late because they were under the impression that another tenant in the building could file on their behalf.

MSC: To find good cause for the late filing of the appeals.
(Mosbrucker/Marshall: 5-0)

The landlord's petition for rent increases based on increased operating expenses to 24 of 30 units was granted. One tenant appeals the decision on the grounds of financial hardship and claims of necessary repairs in the building and his unit. The tenants in 8 units jointly appeal on the following grounds: the new owner did not incur any actual cost increases, as they sold the building shortly after their purchase; the O&M petition was part of a speculative scheme to "flip" the building for a quick profit; successor in interest provisions should not apply when the costs the increase is based on were not incurred by the petitioner; the landlord's failure to repair and lack of an on-site manager should preclude the rent increases; and the former on-site manager's gross pay, rather than net pay, should have been factored into the management expense category in Year One.

MSC: To accept the hardship appeal of the tenant in unit #7 and remand the case for a hearing on the tenant's claim of financial hardship.
(Mosbrucker/Gruber: 5-0)

MSC: To deny the merit appeal of the tenant in unit #7. (Hurley/Gruber: 3-2; Marshall, Mosbrucker dissenting)

MSF: To accept the tenants' joint appeal and remand the case to the Administrative Law Judge to re-examine the issue of whether the tenants gave notice of the repair problems to the landlord and the resident manager. (Marshall/Mosbrucker: 2-3; Dandillaya, Gruber, Hurley dissenting)

MSC: To deny the tenants' joint appeal. (Hurley/Gruber: 3-2; Marshall, Mosbrucker dissenting)

C. 363 Mississippi

AT120085

(rescheduled from 9/18/12)

The tenants' appeal was filed five days late due to health issues regarding family members.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Mosbrucker: 5-0)

The landlord's petition for certification of the costs of exterior painting to the tenants in one unit was granted, resulting in a monthly passthrough in the amount of \$51.89. The tenants appeal, claiming that: the paint job was the result of the landlord's deferred maintenance resulting in a code violation because the landlord only painted two sides of the building in 2006.

MSC: To deny the appeal. (Hurley/Gruber: 3-2; Marshall, Mosbrucker dissenting)

D. 1053 Bush #5

AT120083
(rescheduled from 9/18/12)

The tenants' petition alleging decreased housing services was denied. On appeal, the tenants claim that: the building now has a "name only" resident manager; the building is not sufficiently cleaned or cared for; no emergency protocols have been provided by the landlord; the landlord should ensure quiet enjoyment of the unit by dealing with second-hand smoke from loiterers at the building; and the voluminous evidence they provided was ignored by the ALJ.

MSC: To deny the appeal. (Hurley/Gruber: 5-0)

E. 376 San Carlos #4

AT120084
(rescheduled from 9/18/12)

The tenant's appeal was filed almost two months late due to financial, situational and emotional factors.

MSC: To recuse Commissioners Crow and Mosbrucker from consideration of this appeal. (Marshall/Gruber: 5-0)

MSC: To find good cause for the late filing of the appeal. (Hurley/Gruber: 5-0)

The tenant's petition alleging unlawful rent increases and decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$641.45 due to rent overpayments and \$901.91 for habitability defects on the premises. The tenant appeals on the grounds that: she should have been refunded rent overpayments for 41 rather than 29 months; and the leak at the alleyway constituted a substantial decrease in housing services.

MSC: To accept the tenant's appeal and remand the case to the Administrative Law Judge to adjust the amount of the overpayments and grant a rent reduction for the leaking faucet in the alleyway; a hearing will be held only if necessary.
(Marshall/Qian: 3-2; Gruber, Hurley dissenting)

F. 775 Post #305

AL120091

The tenant's petition alleging an unlawful rent increase was granted because the ALJ found that the occupant is a tenant, and not a subtenant, so the increase is not authorized by Costa-Hawkins, nor were Rules §6.14 notices timely served. On appeal, the landlord argues that: the landlord's acceptance of rent from the tenant for the last five years does not waive his right to impose a Costa-Hawkins rent increase; two of the three cases cited by the ALJ are inapplicable; the Cobb case is distinguishable from the instant case because the landlord in that case knew that the original tenant had vacated and waited almost sixteen months to impose a rent increase; and the landlord in this case never created a separate relationship with the appellee while the Master Tenant was still in occupancy.

MSC: To deny the appeal. (Mosbrucker/Marshall: 3-2; Gruber, Hurley dissenting)

G. 4078 – 24th St.

AT120086

The subtenant's petition alleging that he paid a disproportional share of the rent was granted and the Master Tenant was found liable to the subtenant in the amount of \$5,625.00. On appeal, the Master Tenant claims that: the ALJ exhibited bias against her; the subtenant perjured himself in denying that he has exclusive use of the living room; and she has been repeatedly harassed by the subtenant. The subtenant also appeals the decision on the grounds that the base rent without amenities should not have been split in half because the Master Tenant has exclusive use of significantly more space in the unit and a square footage analysis is more appropriate under the facts of this case.

MSC: To deny both the Master Tenant's and subtenant's appeals.
(Mosbrucker/Hurley: 5-0)

H. 4002 – 19th St.

AT120087 thru -89

The landlords' petition for certification of capital improvement costs to 6 of 8 units was granted, in part, resulting in a monthly passthrough in the amount of \$24.55. The tenants in 3 units appeal the decision on the grounds that: the cost of the painting work should not have been certified because the work was done in an unsafe manner, resulting in toxic lead exposure to the tenants.

MSC: To deny the appeal. (Hurley/Gruber: 3-2; Marshall, Mosbrucker dissenting)

I. 1109 Montgomery

AL120092

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$2,952.64. The landlord appeals, claiming that: his deceased father issued the excessive rent increase, and there could have been reasons for it; the rent increases were not the maximum amount each year and there were years

when no increase was given; there was no unlawful intent on the part of the landlord; and the tenant owes half of his last month's rent and several years of Rent Board fees.

MSC: To deny the appeal. (Mosbrucker/Marshall: 4-1; Hurley dissenting)

J. 90 Divisadero #18

AL120093

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,975.00 due to a leaking ceiling and faulty refrigerator. The landlord appeals, asserting that: the tenant's rental agreement is fraudulent and the tenant is not credible; there are several occupants of the unit and the tenant should not receive the entire amount of the rent overpayments; the ALJ failed to address the issue of notice to the landlord; and the Housing Inspector was incompetent.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

K. 562 Fell

AT120103 & -04

The tenants' petitions alleging an unlawful rent increase from \$584.00 to \$3,600.00 were denied because the ALJ found that the rent increase was warranted under Costa-Hawkins. On appeal, the tenants claim that: they are tenants, as opposed to subtenants, because they have an established relationship with the landlord, including being included in buy-out offers; the landlord has harassed them by failing to deposit their rent checks; there are factual errors in the decision; and the landlord colluded with the Master Tenant in an attempt to evict the other tenants.

MSC: To recuse Commissioner Crow from consideration of this appeal.
(Mosbrucker/Marshall: 5-0)

MSC: To deny the appeal. (Hurley/Gruber: 3-2; Marshall, Mosbrucker dissenting)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A copy of the agency's Annual Statistical Report, which shows a 22% increase in petition filings over Fiscal Year 2010-2011.

B. Articles from BeyondChron, the S.F. Examiner, CapitolAlert, Tenants Together, and the S.F. Chronicle.

IV. Remarks from the Public (cont.)

B. Central Avenue tenant Sue MacNamee reiterated her contention that the lack of a resident manager constituted a safety hazard for 8 months, and that there were no

consequences to the landlord for not having pulled permits. Ms. MacNamee contended that the landlord did not deserve the full 7% increase.

C. Tenant Shelly Gregory of 4002 – 19th St. (AT120087 thru -89) said that the tenants in her building appealed because of the serious problem of lead hazards in residential buildings. Ms. Gregory told the Board that the lead levels in the tenants' units were three hundred times what is permissible. She urged the Board to make this a valid objection to the certification of capital improvement costs.

IX. New Business

Assembly Bill 1925

Executive Director Wolf informed the Board that AB 1925 will become effective January 1, 2013. This legislation will reduce the amount of relocation benefits that will be owing from landlords to San Francisco tenants pursuant to Ordinance Section 37.9C in the event of a temporary capital improvement eviction of less than twenty days. Since the Ordinance section was the result of a voter-approved initiative, it cannot be amended without a return to the ballot. Therefore, Senior Staff recommended that we continue our practice of annotating the copies of the Ordinance we provide to the public to indicate that the amount of such relocation payments are now governed by Civil Code Section 1947.9, and not by Ordinance Section 37.9C. The Board also received a letter from Attorney Dave Wasserman on behalf of the housing industry asking that the Board amend Rules Section 12.15(d) to comport with the new State law. Since the Rules section references Ordinance Section 37.9C, Senior Staff wondered whether amending the Rules was necessary. Commissioner Mosbrucker said that she would like additional time to consider this question. The issue was therefore continued to the November 13th meeting.

X. Calendar Items

Next Board meeting: December 11, 2012

XI. Adjournment

President Gruber adjourned the meeting at 7:45 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.



DAVID GRUBER
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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, November 13, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

GOVERNMENT
DOCUMENTS DEPT

NOV - 8 2012

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 3560 – 21st St. #2

AT120108 & -09

One tenant appeals the decision certifying capital improvement costs on substantive and hardship grounds.

B. 363 Mississippi

AT120110

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the hearing.

C. 1246 Bush #2

AT120105

The tenant appeals the denial of her petition alleging unlawful rent increases.

D. 3110 Laguna #6

AL120106

The landlord appeals the decision finding that no rent increase is authorized by Costa-Hawkins because the tenant is an original occupant of the unit.

E. 2011 – 17th Ave.

AT120107

The tenant appeals the decision finding that a rent increase is warranted under Costa-Hawkins.

VI. Communications

VII. Director's Report

VIII. Old Business

Assembly Bill 1925

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

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ACCESSIBLE MEETING POLICY

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如果遲了申請，我們會盡量安排。

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Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

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Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) assures that deliberations are conducted before the people and that City operations are open to the people's review.

For information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact the Administrator by mail to: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102; by phone at (415) 554-7724; by fax at (415) 554-7854; or by email at sotf@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance from the Administrator or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, found at <http://www.sfbos.org/sunshine>.



Edwin M. Lee
Mayor

Delene Wolf
Executive Director

DAVID GRUBER
PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

BROOKS BEARD
DAVE CROW
SHOBA DANDILLAYA
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

Tuesday, November 13, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

GOVERNMENT
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I. Call to Order

President Gruber called the meeting to order at 6:03 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hurley; Mosbrucker; Qian.
Commissioners not Present: Beard; Marshall; Mosser.
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:05 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 16, 2012.
(Hurley/Mosbrucker: 5-0)

IV. Consideration of Appeals

A. 3560 – 21st St. #2

AT120108 & -09

The landlord's petition for certification of capital improvement costs to 9 of 10 units was granted, in part, resulting in a monthly passthrough in the amount of \$55.72. One tenant appeals the decision on the grounds of financial hardship as well as claiming that: he should not have to pay as much for the new windows, since his windows were not replaced; the work was necessitated by the current owner's deferred maintenance; some of the work was in the nature of repair and maintenance; he does not benefit from the work; he did not receive adequate due process; it is unclear that the costs were reasonable; and the interest rate granted is higher than current market rates.

MSC: To deny the tenant's substantive appeal. (Mosbrucker/Murphy: 5-0)

MSC: To accept the tenant's hardship appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Mosbrucker/Murphy: 5-0)

B. 363 Mississippi

AT120110

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims to have miscalendared the hearing date and asks that another mediation be scheduled.

MSC: To accept the tenant's appeal and remand the case for a new hearing. Should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.

C. 1246 Bush #2

AT120105

The tenant's petition alleging unlawful rent increases was denied because the Administrative Law Judge (ALJ) found that a 4-year lease agreement prohibiting banked rent increases did not apply to time periods after the lease expired. On appeal, the tenant argues that: the rent increases are disallowed pursuant to relevant provisions in the lease; the landlord committed perjury at the hearing; and the ALJ exhibited bias against the tenant and unprofessional conduct at the hearing.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

D. 3110 Laguna #6

AT120106

The tenant's petition alleging an unlawful rent increase from \$630.00 to \$1,900.00 was granted because the ALJ found that the tenant, who grew up in the unit, was a pre-1996 occupant and therefore no increase was authorized by Costa-Hawkins. On appeal, the landlord argues that: the death of the tenant's mother terminated her tenancy and the tenant's is a new tenancy; the tenant is not a lawful subtenant because, as a minor child, he was not lawfully able to enter into a contract; and any subtenancy would have commenced after January 1, 1996, the operative date for a Costa-Hawkins rent increase.

MSC: To deny the appeal. (Mosbrucker/Qian: 3-2; Gruber, Murphy dissenting)

E. 2011 – 17th Ave.

AT120107

The landlord's petition requesting a determination as to whether a rent increase is warranted pursuant to Costa-Hawkins was granted because the ALJ found that the original tenant no longer permanently resides in the subject unit and the only occupant of the unit is a post-1996 subtenant. The subtenant appeals on the grounds that he is actually a co-tenant because he has had many interactions with the landlord over the years; the landlord accepts rent checks with his name on them; and the landlord refers to him as a tenant and to herself as his landlord in her communications with him.

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Mosbrucker, Qian dissenting)

V. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the months of August and September, 2012.

B. Articles from the S.F. Chronicle, the S.F. Examiner, Curbed SF and the Bay Guardian.

VI. Director's Report

Executive Director Wolf told the Board that their annual holiday dinner will take place after the meeting on December 11th and invited them to the Staff Holiday Party at Don Ramon's restaurant on December 20th at noon.

VII. Old Business

Assembly Bill 1925

AB 1925, which adds new Civil Code Section 1947.9 effective January 1, 2013, limits the amount of relocation payments a landlord is required to pay tenants for temporary displacements of less than 20 days. Since the state law supersedes the Rent Ordinance with regard to the amount of relocation benefits a landlord must pay for temporary evictions, the Rent Board's unofficial version of the Rent Ordinance will be annotated to refer to the controlling state law in temporary evictions for capital improvement work under Ordinance §37.9(a)(11) and for lead abatement work under Ordinance §37.9(a)(14).

The Board discussed whether they should adopt regulations to implement the provisions of the bill, since there are questions that are not addressed by the legislation (i.e., when are landlords required to pay the mandated relocation payments?; what happens if the tenant has to vacate for longer than the 20 days?; etc.). The Board asked Senior ALJ Tim Lee to request a City Attorney Opinion on the Board's authority to adopt regulations that fill in the gaps of the state law; and identify issues raised by the new state law and possible amendments to the Rules and Regulations that might address those issues.

VIII. Remarks from the Public

The tenant at 2011 – 17th Ave. (AT120107) told the Board that he has lived in his unit for twelve years, and the landlord has always treated him like a tenant. He expressed disappointment that the Board denied his appeal since he “feels like a tenant” and he spent a lot of time on his case.

IX. Calendar Items

December 11, 2012
10 appeal considerations

Old Business: AB 1925

New Business: Communication Regarding Proposed Legislation

X. Adjournment

President Gruber adjourned the meeting at 6:50 p.m.

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Addendum: Any summary statements are provided by the speaker and appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy by the San Francisco Rent Board.



Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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KENT QIAN

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, December 11, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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V. Consideration of Appeals

A. 144 Eddy #402

AT120121

The tenant appeals the dismissal of his petition alleging decreased housing services due to his failure to appear at the hearing.

B. 2428 Folsom

AL120122

The Master Tenant appeals the decision determining that he charged the subtenant a disproportional share of the rent, claiming that he did not receive notice of the hearing.

C. 3061 Pine

AL120112

The Master Tenant appeals the decision determining that he charged the subtenant a disproportional share of the rent on the grounds of financial hardship.

D. 2133 Stockton

AT120117

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the hearing

E. 875 Vallejo

AT120114 thru -16

The tenant appeals three decisions certifying capital improvement costs.

F. 1440 Golden Gate #101

AT120111

The tenant appeals the decision denying a claim of decreased housing services due to alleged excessive noise from another unit.

G. 2121 Pierce St.

AL120113

The landlord appeals the decision granting a rent increase based on comparable rents.

H. 1263 – 41st Ave.

AL120119

The landlord appeals the decision granting a claim of decreased housing services due to charging utility costs in excess of the amount specified in the lease.

I. 999 Fell St. #3

AL120118

The landlord appeals the decision finding that no rent increase is warranted under Costa-Hawkins because the tenant was an original occupant of the unit.

J. 288 – 9th St. #16

AT120120

The tenant appeals the decision denying claims of decreased housing services and the landlord's failure to repair.

VI. Communications

VII. Director's Report

VIII. Old Business

Assembly Bill 1925

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

Communication Regarding Proposed Legislation

X. Calendar Items

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STABILIZATION & ARBITRATION BOARD,**

Tuesday, December 11, 2012
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hurley; Mosbrucker;
Mosser; Qian.
Commissioners not Present: Beard.
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:07 p.m.; Commissioner Marshall arrived at the meeting at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of November 13, 2012.
(Hurley/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Attorney Dave Wasserman, representing the landlord at 999 Fell (AL120118), told the Board that he was before them last year on this same issue, that of a minor child remaining in a unit after their parents have moved. Mr. Wasserman reminded the Board that in the prior two cases, the tenants moved in to the unit prior to January 1, 1996. In the instant case, there is a post-1/1/96 tenant. Mr. Wasserman asked the Commissioners to consider whether this should warrant a different result.

B. Carlos Calas, the tenant at 288 - 9th St. #16 (AT120120), said that his case is "not as simple as it seems on paper" and that "tenants are suffering." Mr. Calas told the Board that the building's electricity failed again today.

C. Michelle Horneff-Cohen, representing the landlord in the case at 875 Vallejo (AT120114 thu-16), asked that the Board deny the tenant's untimely appeal because no new information had been provided.

D. Valerie Yee, representing the landlord at 2121 Pierce (AL120113), asked that the Board deny the tenant's request for lower rent and provided additional evidence of comparable rents.

V. Consideration of Appeals

A. 144 Eddy #402

AT120121

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant contends that he missed the hearing due to a calendaring error.

MSC: To accept the appeal and remand the case for a new hearing. Should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

B. 2428 Folsom

AL120122

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$3,990.00. The Master Tenant appeals, claiming that he failed to appear because he did not receive notice of the hearing.

MSC: To accept the appeal and remand the case for a new hearing. Should the Master Tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Murphy: 5-0)

C. 3061 Pine

AL120112

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$10,932.00. The Master Tenant appeals on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the Master Tenant's claim of financial hardship. (Gruber/Murphy: 3-2; Marshall, Mosbrucker dissenting)

D. 2133 Stockton #D207

AT120117

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant provides evidence that

she had a medical procedure performed that morning which ran late, and she then got caught in traffic.

MSC: To accept the appeal and remand the case for a new hearing; should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Mosbrucker/Marshall: 5-0)

E. 875 Vallejo

AT120114 thru -16

The tenant's appeal of three decisions certifying capital improvement costs was filed approximately five weeks late because she was ill and another tenant in the building who she was representing was hospitalized.

MSC: To find good cause for the late filing of the appeal. (Mosbrucker/Qian: 5-0)

The landlords' three petitions for certification of various capital improvement costs were granted. The tenant in one unit appeals on the grounds that: the landlord should have chosen the painting contractor who submitted a lower bid; the painters were incompetent and unprofessional; the building was painted six years prior to the instant paint job, so the work does not constitute a capital improvement; the windows were replaced because they leaked, which they continued to do after replacement; the building was painted because the siding was rotted; the seismic work was not necessary; and the passthroughs are not being equitably divided.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

F. 1440 Golden Gate #101

AT120111

The tenant's petition alleging decreased housing services due to excessive noise from another unit in the building was denied. On appeal, the tenant maintains that the ALJ was biased towards the landlord and his witness, the neighboring tenant, and that the decision should have been based upon the requirements of the San Francisco Noise Ordinance.

MSC: To deny the appeal. (Mosbrucker/Murphy: 5-0)

G. 2121 Pierce St.

AL120113

The landlord's petition for a rent increase based on comparable rents was granted, although the ALJ determined the comparable rent to be \$2,234.00, rather than the \$4,995.00 requested by the landlord. On appeal, the landlord claims that: the ALJ erred in determining the market rent for the unit in 2003; the tenant failed to present proof of the condition of the unit at the inception of the tenancy; and the decision is not supported by the evidence.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

H. 1263 – 41st Ave.

AL120119

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants for any amounts they paid in excess of 1/5 of the total utility costs for the building, as per their original lease agreement. The landlord appeals, claiming that the decision is unfair because the tenants have more people residing in their unit and should pay a greater share of the utility costs.

MSC: To deny the appeal. (Mosbrucker/Murphy: 5-0)

I. 999 Fell St. #3

AL120118

The tenant's petition alleging an unlawful rent increase from \$1,681.75 to \$3,295.00 was granted because the ALJ found that the tenant was an original occupant of the unit and therefore no rent increase was authorized by Costa-Hawkins. On appeal, the landlord argues that the tenant cannot be considered an original occupant because he was a minor child when he moved in to the unit with his parents after the effective date of Costa-Hawkins and his parents no longer permanently reside in the unit.

MSC: To recuse Commissioner Mosser from consideration of this appeal.
(Murphy/Mosbrucker: 5-0)

J. 288 – 9th St. #16

AT120120

The tenant's petition alleging decreased housing services and the landlord's failure to repair was denied because the tenant failed to prove that the condition of the electrical service rose to the level of a code violation and the landlord responded expeditiously to the tenant's complaints regarding bed bugs. On appeal, the tenant claims that the landlord should have provided more than three extermination treatments for the bed bugs and the electrical service problems have been ongoing for over ten years.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. An updated Staff Roster.

B. Articles from the S.F. Examiner, the Bay Citizen, BeyondChron, S.F. Apartment and the S.F. Chronicle.

VII. Director's Report

Executive Director Wolf told the Board that the allowable annual increase commencing March 1, 2013 will be 1.9%, the same amount as this year. She also invited the Commissioners to the Staff Holiday Party.

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

AB 1925, which adds new Civil Code Section 1947.9 effective January 1, 2013, limits the amount of relocation payments a landlord is required to pay tenants for temporary displacements of less than 20 days. Since the state law supersedes the Rent Ordinance with regard to the amount of relocation benefits a landlord must pay for temporary evictions, the Rent Board's unofficial version of the Rent Ordinance will be annotated to refer to the controlling state law in temporary evictions for capital improvement work under Ordinance §37.9(a)(11) and for lead abatement work under Ordinance §37.9(a)(14).

The Board continued their discussion of whether they should adopt regulations to implement the provisions of the bill, since there are questions that are not addressed by the legislation. The Board had asked Senior ALJ Tim Lee to request a City Attorney Opinion on the Board's authority to adopt regulations that fill in the gaps of the state law; and to identify issues raised by the new state law and possible amendments to the Rules and Regulations that might address those issues. In response to the Board's inquiry, the Office of the City Attorney provided initial oral advice, which Senior ALJ Lee provided to the Board in a confidential Memorandum. After a brief discussion of whether or not to keep the Memorandum confidential, the Board voted as follows:

MSC: To waive privilege as to the confidential Memorandum from the Office of the City Attorney regarding Assembly Bill 1925 (Civil Code Section 1947.9) and make the document available to the public.
(Murphy/Mosbrucker: 5-0)

The Board then continued discussion of this item to the next meeting.

IV. Remarks from the Public (cont.)

E. Carlos Calas told the Board that he understands their decision in light of the fact that no Notice of Violation has been issued, but that doesn't mean that something isn't going on. Mr. Calas said that the electricity goes out whenever tenants in the building use appliances and that they are receiving "bad service" although the rent goes up annually.

IX. New Business

Communication Regarding Proposed Legislation

Executive Director Wolf told the Board that, in the future, she will forward any legislation that is introduced at the Board of Supervisors, without waiting to see if it is assigned to Committee, or for it to be in final form. By her doing so, the Commissioners will be aware of all pending proposals.

X. Calendar Items

February 12, 2013

13 appeal considerations

Old Business: AB 1925

New Business:

A. Departmental Budget

B. Rules §1.21 Petitions: Procedural Requirements

XI. Adjournment

President Gruber adjourned the meeting at 7:00 p.m.

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Edwin M. Lee
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Tuesday, February 12, 2013
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V. Consideration of Appeals

A. 2085 Bush #507 AT130003

The tenant appeals the dismissal of a petition alleging decreased housing services due to her failure to appear at the hearing.

B. 1002 Filbert AT130005

The tenant appeals the decision granting the landlord's claim that the unit is not the tenant's principal place of residence, claiming non-receipt of Notice of Hearing.

C. 905 Columbus #105 AL120129

The landlord appeals the decision granting a claim of unlawful rent increases.

D. 850 Jamestown Ave. AL130004

The landlord appeals the decision granting a claim of decreased housing services.

E. 125 Palm Ave. #101 AT130002



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BARTHOLOMEW MURPHY
KENT QIAN

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, February 12, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Gruber; Hurley; Mosbrucker; Mosser.
Commissioners not Present: Dandillaya.
Staff Present: Lee; Wolf.

Commissioner Qian appeared on the record at 6:07 p.m.; Commissioner Murphy arrived at the meeting at 6:09 p.m.; and Commissioner Marshall appeared at 6:12 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 11, 2012 with the following amendment: to show that the appeal regarding 999 Fell Street (AL120118) was denied 3-2 on a motion made by Commissioner Marshall and seconded by Commissioner Mosbrucker, with Commissioners Gruber and Murphy dissenting.
(Hurley/Crow: 5-0)

IV. Remarks from the Public

A. Syd Najeeb, the landlord in the case at 850 Jamestown (AL130004), said that the premises where the tenants reside is akin to a pickup truck and the tenants have outgrown the amenities. Mr. Najeeb told the Board that the tenants added a stove without his permission and then brought in hot plates. Mr. Najeeb believes that San Francisco tenants feel that they can breach their lease agreements because there will be no consequences – they have access to free legal services in this “pro-tenant environment.”

B. Attorney Lawrence Fasano spoke on behalf of the tenant at 1002 Filbert Street (AT130005), saying that the tenant was out of the country at the time of the hearing representing the US at the Parachute Championships in Dubai. Mr. Fasano pointed out that the tenant's itinerary demonstrates that she did not receive the Notice of Hearing. He told the Board that the tenant has lived in the unit for 22 years.

C. Leonard Mastromonaco, representing the landlord in the case at Filbert Street, said that the tenant is making \$2,400.00 per month by overcharging her subtenants and couldn't be living in the unit since she is renting out all the bedrooms. Mr. Mastromonaco also maintained that the tenant sent an e-mail during the time when she was supposedly out of contact.

D. Attorney Elizabeth Rhodes asked the Board to clarify Rules §12.19 in that the regulation does not require that the tenant provide the landlord with an address where they can be reached but the landlord faces possible treble damages if they fail to timely comply with the requirements of the Section.

E. Attorney Jak Marquez, representing the landlord at 101 Broderick (AL120123), told the Board that there is no "tenant in occupancy" in the unit because the occupants are the tenant's grandchildren, who are residing there while their grandmother is in a rest home. Mr. Marquez said that the landlord's hands are tied because they have no right to object to a family member moving in to the unit.

F. Tenant Jonas Judd of 1211 Arguello (AL130001) expressed his opinion that the landlord had failed to provide sufficient evidence to prove his case and that the decision is "spot on."

V. Consideration of Appeals

A. 2085 Bush #507

AT130003

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing. Should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Mosbrucker/Marshall: 5-0)

B. 1002 Filbert

AT130005

The landlord's petition for a rent increase from \$611.10 to \$4,000.00 based on Rules §1.21 and/or Costa-Hawkins was granted because the Administrative Law Judge (ALJ) found that the original tenant no longer permanently resides in the subject unit. The tenant appeals, claiming that she did not receive the Notice of Hearing and attaching the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing. Should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

C. 905 Columbus #105

AL120129

The tenants' petition alleging unlawful rent increases was granted and the landlord was found liable to the tenants in the amount of \$4,450.00. The landlord appeals on the grounds that: the tenants have been violating the House Rules; and the rent increases were imposed due to the establishment of new tenancies with additional occupants, pursuant to the oral lease.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

D. 850 Jamestown Ave.

AL130004

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$200.00 per month due to the landlord's removal of the stove in the unit. The landlord appeals, claiming there is no decrease in services since no stove was provided at the inception of the tenancy; and, since there is a discrepancy as to the date the tenant claimed the stove was removed, the entirety of the tenant's testimony must be found not credible.

MSC: To deny the appeal. (Marshall/Mosbrucker: 5-0)

E. 125 Palm Ave. #101

AT130002

The tenant's petition alleging decreased housing services was denied because the ALJ found that the tenant failed to prove that other tenants in the building were making excessive noise and interfering with her quiet enjoyment of the premises. On appeal, the tenant claims that: the landlord falsely accuses her of making excessive noise; the landlord provided false testimony at the hearing; and there are factual errors in the decision.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

F. 101 Broderick #405

AL120123 (rescheduled from 1/15/2013)

The landlord's petition for a determination pursuant to Rules §1.21 was denied because the ALJ found that the original tenant's grandchildren live in the unit as their principal place of residence, although their grandmother currently resides in a care home. On appeal, the landlord argues that the occupants of the unit are not approved subtenants but, rather, family members who the landlord was obligated to let move into the unit.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

G. 180 – 4th Ave. #6

AL120124 (rescheduled from 1/15/2013)

The tenant's petition alleging an unlawful increase in rent from \$1,087.67 to \$2,250.00 was granted because the ALJ found that the tenant still permanently resides in the subject unit, although it may not be his principal place of residence. On appeal, the landlord argues that: the tenant uses his San Francisco apartment as an occasional residence while primarily living in Minnesota, which should not preclude a Costa-Hawkins rent increase; the only way to make sense of the phrase "permanently resides" is to give it the same meaning as "principally resides;" allowing a tenant to permanently reside in more than one place subverts the intent of the legislation; and the tenant does not meet the criteria for an owner move-in eviction under the Board's Rules and Regulations.

MSC: To recuse Commissioner Gruber from consideration of this appeal.
(Murphy/Marshall: 5-0)

MSC: To deny the appeal. (Mosbrucker/Marshall: 3-2; Murphy, Mosser dissenting)

H. 1335 Union #7

AL120125

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$75.00 due to lack of a shower free of mold and mildew. The landlord appeals, claiming that: the NOV is unclear and does not mention mold; the tenant and the DBI were unresponsive; she was not provided with a copy of the tenant's documentation; the tenant failed to notify her of the problem until it was significant; and the abatement period should run from the date the extent of the problem was clarified.

MSC: To deny the appeal. (Murphy/Marshall: 5-0)

I. 2444 Van Ness #5

AL120128

The tenant's petition alleging an unlawful rent increase from \$3,690.41 to \$5,250.00 was granted because the ALJ found that the petitioner is an original occupant who took possession of the unit with the consent of the landlord at the time the initial base rent was established. On appeal, the landlord argues that the rent increase was authorized by Rules §6.14 because the petitioner did not move in at the time the rent for the unit was first established but, rather, at a later date subsequent to an increase in the rental amount.

MSC: To deny the appeal. (Marshall/Mosbrucker: 5-0)

J. 1713 Waller St.

AT120127

The landlord's petition seeking a rent increase pursuant to Costa-Hawkins and/or Rules Sections 1.21 and 6.14 was granted as the ALJ found that the tenant was a post-1996 subtenant who had not established a direct relationship with the landlord. On appeal, the tenant claims that: the tenant's payment of back rent owed on another unit established a landlord-tenant relationship between the parties; the ALJ ignored that there was privity of contract between tenant and the landlord, which means that she cannot be a subtenant; the ALJ should have relied on the language of the lease, rather than trying to infer the parties'

intent; and any ambiguity has to be resolved in favor of the tenant, since it was the landlord who drafted the lease.

MSC: To deny the appeal. (Murphy/Gruber: 4-1; Mosbrucker dissenting)

K. 119 Oxford

AT120126

The subtenant's petition alleging that he paid a disproportional share of the rent pursuant to Rules §6.15C(3) was denied because the ALJ found that the subtenant and Master Tenant did not reside in the same rental unit. On appeal, the subtenant claims that the decision is biased against him and that the figures provided by the Master Tenant are erroneous.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

L. 1211 Arguello

AL130001

The tenant's petition alleging an unlawful rent increase from \$1,954.18 to \$4,750.00 was granted because the ALJ found that the tenant still permanently resided in the subject unit at the time the notice of rent increase was served. The landlord appeals the decision on the grounds that: the tenant lied to his prior landlord regarding where he was living in order to obtain money for a buyout and this taints his testimony that he resides in the subject unit pursuant to the Evidence Code; the tenant should also not be found credible on the question of whether subtenants were living in the unit; more weight should have been given to the testimony of the property manager; and the tenant should not be rewarded for his deception.

MSC: To deny the appeal. (Marshall/Mosbrucker: 5-0)

M. 769A 18th Ave.

AL130006

The tenants' petition alleging decreased housing services and unlawful rent increases was granted as to a \$100.00 monthly rent reduction for the presence of mold in the unit. On appeal, the landlord argues that the mold is the responsibility of the tenants.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A letter from Attorney Elizabeth Rhodes requesting that the Board clarify certain provisions of Rules §12.19.

B. Articles from gadling.com, sheppardlaw.com, S.F. Apartment Magazine, the S.F. Bay Guardian, the S.F. Examiner, Bay City News, BeyondChron, and the Mayor's Office of Communications.

C. The office workload statistics for the months of November and December, 2012.

D. An updated copy of the Rent Ordinance incorporating newly enacted California Civil Code Section 1947.9 regarding temporary relocation payments.

E. The Order in the case of Foster v. S.F. Rent Board (Superior Court Case No. CGC-11-514035).

F. A letter from Attorney James Parrinello of Nielsen, Merksamer, Parrinello, Gross and Leoni, LLP on behalf of the S.F. Apartment Association and the Coalition for Better Housing asking that the Mayor and Board of Supervisors take action regarding the issue of illegal short-term/transient rentals for profit.

VII. Director's Report

Executive Director Wolf told the Commissioners that the Agency's workload has increased quite a bit; excluding utility passthrough petitions, the Department averaged 20 more petitions per month in 2012 than in 2011, including capital improvement (+9) and tenant petitions (+6). Senior ALJ Tim Lee let the Board know that a final judgment has been issued in the Foster case, where the Court found that Rules §12.20 was not preempted, and that Rules §6.15C(3) is not ultra vires. The landlord's attorney has indicated that she may appeal.

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

AB 1925, which added new Civil Code Section 1947.9 effective January 1, 2013, limits the amount of relocation payments a landlord is required to pay tenants for temporary displacements of less than 20 days. Since the state law supersedes the Rent Ordinance with regard to the amount of relocation benefits a landlord must pay for temporary evictions, the Rent Board's unofficial version of the Rent Ordinance was annotated to refer to the controlling state law in temporary evictions for capital improvement work under Ordinance §37.9(a)(11) and for lead abatement work under Ordinance §37.9(a)(14).

The Board has been discussing whether they should adopt regulations to implement the provisions of the bill, since there are questions that are not addressed by the legislation. The Board had asked Senior ALJ Tim Lee to request a City Attorney Opinion on the Board's authority to adopt regulations that fill in the gaps of the state law; and to identify issues raised by the new state law and possible amendments to the Rules and Regulations that might address those issues. In response to the Board's inquiry, the Office of the City Attorney provided initial oral advice, which Senior ALJ Lee provided to the Board in a confidential Memorandum. At their meeting on December 11, 2012, the Board voted to waive confidentiality and discussed the contents of the Memorandum.

At this evening's meeting, the Board decided to hold off on and see if any problems arise before adopting regulations or referring the matter to the Board of Supervisors; the issue will

continue to be placed on future agendas and the Commissioners will poll their respective communities. Commissioner Marshall opined that any problems that arise will likely result from the work taking more than 20 days, either innocently or negligently.

IV. Remarks from the Public (cont.)

G. A tenant thanked the Board for denying the landlord's appeal in the case concerning 905 Columbus (AL120129) because the landlord had done the same thing to him but he did not file a petition.

H. Attorney Dave Wasserman spoke to the issue of the landlord's responsibility to find out where the tenant is living in Rules §1.21 cases. Mr. Wasserman argued that this should not be the landlord's burden and that this requirement is not contained in the Rules and Regulations.

IX. New Business

A. Departmental Budget

Executive Director Wolf briefly went over next year's proposed budget, which is \$178,238 more than this year's budget due to salary increases and retirement contributions. The Board then passed the following motion:

MSC: To approve the proposed budget for Fiscal Year 2013-2014.
(Marshall/Gruber: 5-0)

B. Rules §1.21 Petitions: Procedural Requirements

Executive Director Wolf informed the Board that there had been a recent situation where a 1.21 hearing had to be continued because the tenant had not received Notice of the Hearing, although it became evident that the landlord knew an address where the tenant could be reached. Therefore, Senior Staff advised the counseling staff that every effort should be made to obtain a current mailing address for the tenant prior to scheduling the landlord's petition for hearing. The 1.21 petition form also states that the petition must be completely filled out, "including mailing and/or forwarding addresses (if known) for the original tenant and any other occupants, including tenants, subtenants, and/or assignees residing in the subject rental unit." Unfortunately, there was a misunderstanding as to whether landlords need to go to extra lengths to obtain a forwarding address if the tenant has not provided one. Ms. Wolf assured the Commissioners that this is not the case, and that staff has been so advised.

X. Calendar Items

March 12, 2013

11 appeal considerations

Old Business: AB 1925 (Civil Code §1947.9)

New Business: Rules and Regs. §12.19

XI. Adjournment

President Gruber adjourned the meeting at 7:50 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.

Addendum: Any summary statements are provided by the speaker and appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy by the San Francisco Rent Board.



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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 12, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 685 Geary #302

AT130009

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the hearing.

B. 4935 – 17th St.

AT130010

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 2812 – 2816 – 21st St.

AL130015 & -16

The landlord appeals the decision granting a claim of decreased housing services.

D. 3221 Buchanan #12

AL130007

The Master Tenant appeals the decision granting a disproportional share of the rent claim under Rules Section 615C(3).

E. 826 Arkansas

AL130008

The landlord appeals the decision granting claims of decreased housing services and unlawful rent increase.

F. 2193 Divisadero

AT130011

The subtenant appeals the decision denying her claim of decreased housing services.

G. 922 Post #504

AT130012

The tenant appeals the decision denying his claim of decreased housing services due to the presence of secondhand smoke in the unit.

H. 722 Jackson #3

AL130013

The landlord appeals the decision finding that no rent increase is warranted under Costa-Hawkins.

I. 1901 Turk #3

AL130014

The landlord appeals the decision granting a claim of unlawful rent increase.

J. 55-1/2 Lucy St.

AL130017

The landlord appeals the decision granting a claim of decreased housing services.

K. 285 Buckingham Way #602

AT130018

The tenant appeals the decision granting a claim of unlawful rent increase on the grounds that the 3-year Statute of Limitations on rent overpayments should not apply.

VI. Communications

VII. Director's Report

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

IV. Remarks from the Public (cont.)

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IX. New Business

Rules and Regulations Section 12.19

X. Calendar Items

XI. Adjournment

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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 12, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Gruber; Hurley; Mosbrucker; Mosser;
Qian.
Commissioners not Present: Dandillaya; Marshall.
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 12, 2013.
(Qian/Hurley: 5-0)

IV. Remarks from the Public

A. Landlord Carl Leach of 4935 – 17th St. (AT130010) told the Board that the tenant told him she had received an inheritance in 2012 but she failed to list it on her Hardship Application.

B. The landlord in the case at 55-1/2 Lucy St. (AL130017) said that she made a few attempts to install a heater in the unit, but the tenant wouldn't provide access. She asked the Board what she should do.

C. Attorney Dave Wasserman, representing the landlord in the case at 1901 Turk #3 (AL130014), said that the tenant filed the petition alleging an unlawful rent increase and the burden therefore should be on the tenant, and not the landlord.

D. The landlord in the case concerning 722 Jackson #3 (AL130014) asked whether the Commissioners had received her late submission and was assured that they had.

V. Consideration of Appeals

A. 685 Geary #302

AT130009

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the hearing. On appeal, the tenant claims not to have received notice of the hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing. Should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Murphy/Mosbrucker: 4-1; Gruber dissenting)

B. 4935 – 17th St.

AT130010

The landlord's petition for certification of capital improvement costs to three of five units was granted, resulting in a monthly passthrough in the amount of \$26.72. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Mosbrucker/Qian: 5-0)

C. 2812 – 2816 – 21st St.

AL130015 & -16

The tenant's petition alleging decreased housing services due to lack of heat in the unit was granted and the landlord was found liable to the tenant in the amount of \$9,000.00. The landlord appeals the decision on the grounds of financial hardship and claims that: the decision represents a windfall to the tenant, who has always shared the unit with roommates; the tenant added a roommate in breach of the lease, which reduced his rent; the tenant was supplied with a pair of heaters; the tenant made it difficult for repairs to be effectuated; and there is no basis for the amount of the rent reduction.

MSC: To deny both the landlord's hardship and substantive appeals.
(Mosbrucker/Qian: 3-2; Gruber, Murphy dissenting)

D. 3221 Buchanan #12

AL130007

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$1,398.30. On appeal, the Master Tenant claims that: there are factual errors in the decision; she does not have exclusive use of the garage but, rather, shares it with two other tenants; the subtenant was offered garage parking for her bicycle as well as storage; the additional amenities she provided accounted for the higher rent; and the subtenant lied at the hearing and should not have been found to be more credible by the ALJ.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

E. 826 Arkansas

AL130008

The tenant's petition alleging decreased housing services and an unlawful rent increase was granted, in part, and the landlord was found liable to the tenant in the amount of \$3,950.00 for rent overpayments and due to a lack of heat in the unit. On appeal, the landlord claims that: she was under the impression that she could submit documents after the date that the record closed; the petitioner was a friend, as opposed to a tenant, and the rent was offered at less than market as a favor for a short-term stay; and the amount granted for lack of heat is disproportional to the amount of the utility bills for the unit.

MSC: To deny the appeal. (Murphy/Mosbrucker: 4-1; Beard dissenting)

F. 2193 Divisadero

AT130011

The subtenant's petition alleging decreased housing services was denied. The subtenant appeals the decision, claiming that the ALJ failed to rule on evidence regarding: the Master Tenant's repeated unlawful entries into the subtenant's room; the removal of her personal property by the Master Tenant; the Master Tenant's failure to protect the subtenant from mail fraud; and the Master Tenant's usurpation and blockage of the subtenant's parking space.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

G. 922 Post #504

AT130012

The tenant's petition alleging decreased housing services due to the presence of secondhand tobacco and marijuana smoke in his unit was denied because the ALJ found that the landlord took reasonable steps to rectify the problem. On appeal, the tenant claims that: there have been new developments in the case subsequent to the hearing; the Hepa filter provided by the landlord does not prevent carcinogenic particles from entering the unit but, rather, removes them after he has already been exposed; and the Supreme Court has affirmed the right of the police to conduct warrantless searches and seize properties where drug abuse is going on.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

H. 722 Jackson #3

AL130013

The tenant's petition alleging an unlawful rent increase from \$432.95 to \$1,300.00 was granted because the ALJ found that the tenant was an original occupant of the subject unit or a lawful subtenant who resided in the unit prior to January 1, 1996 and therefore no Costa-Hawkins increase was warranted. On appeal, the landlord argues that: the estoppel certificate does not list the tenant as an occupant of the unit; and the tenant failed to provide documentation proving that he lived in the unit.

MSC: To deny the appeal. (Mosbrucker/Qian: 4-1; Hurley dissenting)

I. 1901 Turk #3

AL130014

The tenant's petition alleging an unlawful rent increase from \$921.25 to \$1,850.00 was granted because the ALJ found that the tenant is only temporarily away from the unit for purposes of education and therefore no Costa-Hawkins increase is warranted. The landlord appeals on the grounds that: the decision improperly places the burden of proof on the landlord; the tenant's nursing residency is almost over and she has not yet returned to the unit; the tenant allowed friends to stay in the unit, who should be considered subtenants; and the tenant is not required to have completed a residency in order to obtain nursing jobs in California.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

J. 55-1/2 Lucy St.

AL130017

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$6,045.00 due to the lack of heat and stove ventilation in the unit. On appeal, the landlord claims that: the tenant has made unwarranted charges against her; the tenant never asked for a heater or stove vent; the tenant failed to allow access for a heater and vent to be installed; and the rent reduction for lack of heat should be granted for the winter months only.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing on the issue of whether a stove vent is necessary and to determine whether the tenant denied the landlord access to the unit to make the repairs subsequent to the issuance of the decision. (Gruber/Mosbrucker: 5-0)

K. 285 Buckingham Way #602

AT130018

The tenant's petition alleging an unlawful rent increase for payment of a "security fee" was granted and the landlord was found liable to the tenant in the amount of \$861.46. On appeal, the tenant maintains that the 3-year Statute of Limitations should not apply because the tenant failed to pay the noticed increase until the landlord served him with a 3-Day Notice, which means that there were no overpayments prior to that time.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record with instructions not to apply the 3-year Statute of Limitations on rent overpayments (Ordinance §37.8(e)(7)) until the landlord demanded payment of the security fees. (Mosbrucker/Qian: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The Board's Annual Report on Eviction Notices.

B. Articles from the S.F. Chronicle, the Sacramento Bee and BeyondChron.

VII. Director's Report

Executive Director Wolf briefly went over the Board's Annual Report of Eviction Notices and told the Commissioners that their Form 700 Statements of Economic Interest are due to the Ethics Commission by April 2, 2013; Sunshine Declarations and Ethics Declarations, if applicable, are due by April 1st.

VIII. Old Business

AB 1925

Senior ALJ Tim Lee told the Board that, as of last Friday, the Department hadn't received an eviction notice of less than 20 days for capital improvement work this year; Senior Staff will continue to keep the Board apprised as to any issues arising from the change in the law regarding the amount of relocation payments.

IV. Remarks from the Public (cont.)

E. The landlord in the case at 55-1/2 Lucy inquired as to the disposition of her appeal.

F. Attorney Elizabeth Rhodes told the Board she was seeking clarification of Rules §12.19 regarding the tenant's duty to provide the landlord a forwarding address when they had been displaced due to fire or other disaster. Ms. Rhodes told the Board that a tenant is currently suing the landlord for failing to provide notification of their reoccupancy rights when they had provided no forwarding address. Ms. Rhodes said that the tenant's obligation to provide an address should be explicitly stated in the Rules and Regulations.

IX. New Business

Rules and Regulations §12.19

The Board briefly discussed the issue raised by Attorney Elizabeth Rhodes, as outlined above in "Remarks from the Public." The Tenant Commissioners were concerned that in situations like this, tenants vacate the unit in haste and landlords should not "get off the hook," but should just mail to the old address. The Commissioners asked Senior ALJ Lee to draft proposed language along the lines of Civil Code §1950.5 for discussion at the next meeting which would require landlords to send notification of the tenant's right to reoccupy the unit to the last known address; any such amendment to the Rules would be prospective only.

MSC: To ask Senior Staff to draft possible amendments to Rules §12.19 for discussion purposes at the next Board meeting. (Murphy/Gruber: 4-1; Mosbrucker dissenting)

X. Calendar Items

April 16, 2013

12 appeal considerations

Old Business:

A. Assembly Bill 1925 (Civil Code §1947.9)

B. Rules and Regulations §12.19

XI. Adjournment

President Gruber adjourned the meeting at 7:30 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.

City and County of San Francisco



Residential Rent Stabilization
and Arbitration Board

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

DAVID GRUBER
PRESIDENT

BROOKS BEARD
DAVE CROW
SHOBA DANDILLAYA
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, April 16, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

11:20 a.m. MSF
GOVERNMENT
DOCUMENTS DEPT

APR 11 2013

SAN FRANCISCO
PUBLIC LIBRARY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

A. 2503 Jones St.

AL130021

The landlord appeals the dismissal of his petition for certification of capital improvement costs.

B. 1250 Taylor #16

AT130022-24

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 230 Central #7

AT130029

The tenant appeals the remand decision denying his claim of financial hardship.

D. 1922 Broderick #3

AT130035

The tenant appeals the dismissal of his petition alleging decreased housing services.

E. 700-712 Polk

AL130019

The landlord appeals the denial of their Petition for Extension of Time to Do Capital Improvement Work.

F. 436 Castro #3

AL130025

The landlord appeals the decision determining that no rent increase is warranted pursuant to Costa-Hawkins.

G. 3001 Pine #6

AT130026

The tenant appeals the decision determining that he is not a "Tenant in Occupancy" pursuant to Rules §1.21.

H. 2159-B Lombard

AL130028

The landlord appeals the decision granting a claim of unlawful rent increase because the landlord failed to prove that the building was exempt as new construction under Costa-Hawkins.

I. 3815-17 – 18th St.

AL130030 & -31

The landlord appeals the decision granting a claim of decreased housing services due to the loss of storage space.

J. 2238 Vicente, Apt. 3

AT130033

The tenant appeals the decision denying her claims of decreased housing services.

K. 1186 Fulton St.

AL130032

The Master Tenant appeals the decision granting a claim of disproportional rent pursuant to Rules §6.15C(3).

L. 2436 San Bruno Ave.

AL130034

The landlord appeals the decision granting a claim of unlawful rent increases on the grounds that the subject tenancy is commercial.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Assembly Bill 1925 (Civil Code Section 1947.9)

B. Rules and Regulations Section 12.19

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

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如果遲了申請，我們會盡量安排。

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Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) assures that deliberations are conducted before the people and that City operations are open to the people's review.

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KENT QIAN

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
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Tuesday, April 16, 2013
at 6:00 p.m.
25 Van Ness Avenue, Suite 70, Lower Level

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

GOVERNMENT
DOCUMENTS DEPT

MAY - 9 2013

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I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Dandillaya; Gruber; Hurley; Mosbrucker;
Murphy; Qian.
Commissioners not Present: Mosser.
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:09 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 12, 2013.
(Murphy/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Tenant John de Leon of 436 Castro #3 (AL130025) told the Board that he came to the meeting in order to "put a face" to the facts of his case.

B. Tenant Warren Burch of 3001 Pine #6 (AT130026) asked questions regarding when the Commissioners' decision would be made.

C. Attorney Jessica Chylik, representing the Master Tenant in the case at 1186 Fulton (AL130032), asked if the Board received her objection to an untimely submission from the subtenant in the case.

V. Consideration of Appeals

A. 2503 Jones St.

AL130021

The landlord's petition for certification of capital improvement costs to 1 of 2 units was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the landlord claims to have requested postponement of the hearing because he was going to be out of the country, and attaches a Request for Postponement form that was never received by the Rent Board.

MSC: To accept the appeal and remand the case for a new hearing.
(Marshall/Murphy: 5-0)

B. 1250 Taylor #16

AT130022-24

The landlord filed 3 petitions for certification of capital improvement costs, which were approved for 13 of 15 units. One tenant appeals the decisions on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for a hearing on the tenant's claims of financial hardship.
(Murphy/Mosbrucker: 5-0)

C. 230 Central #7

AT130029

The tenant's hardship appeal of an operating and maintenance expense increase was denied because the tenant declined to provide information on any attempts to find more than part-time work and his income-to-rent ratio was not significantly different than at the inception of the tenancy. The tenant appeals the remand decision, claiming that he meets the Board's guidelines for hardship and the ALJ failed to consider volunteer efforts that he hopes will result in paid employment.

MSC: To accept the appeal and remand the case for a supplemental hearing to consider the new evidence provided with the tenant's appeal regarding the tenant's income and attempts to obtain additional employment; to determine the tenant's initial and current income-to-rent ratio; and to consider granting the tenant some relief from the rent increase, even if temporary. (Marshall/Mosbrucker: 5-0)

D. 1922 Broderick #3

AT130035

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Mosbrucker/Murphy: 5-0)

E. 700-712 Polk

AL130019

The landlords' petition for extension of time to do capital improvement work was denied because the ALJ found that the landlords failed to obtain all necessary building permits before the petition was filed and had not shown that the time estimate for completion of the work is reasonable. The landlords appeal on the grounds that: it was not clear to them that the record would close as of December 31, 2012; the landlords diligently sought additional permit information; the additional permit is a revision of the original and not a new permit and therefore the landlords had all the necessary permits at the time the petition was filed; and the project will be completed within the original time estimate.

MSC: To deny the appeal. (Mosbrucker/Marshall: 3-2; Gruber, Murphy dissenting)

F. 436 Castro #3

AL130025

The tenant's petition alleging an unlawful rent increase was granted because the ALJ found that the tenant, a flight attendant, permanently resides in both New York and San Francisco and therefore no Costa-Hawkins increase is warranted. On appeal, the landlord argues that the decision subverts the intent of Costa-Hawkins as rent control protections should only be afforded to one's principal place of residence.

MSC: To accept the appeal and remand the case to vacate the decision and find that there is no "Tenant in Occupancy" at the subject unit.
(Murphy/Gruber: 2-3; Beard, Marshall, Mosbrucker dissenting)

MSC: To deny the appeal. (Mosbrucker/Marshall: 3-2; Gruber, Murphy dissenting)

G. 3001 Pine #6

AT130026

The landlord's petition requesting a determination pursuant to Rules §1,21 was granted as the ALJ found that the tenant's principal place of residence is in Hawaii and there is no "Tenant in Occupancy" at the subject unit. The tenant appeals the decision, claiming that: the ALJ's decision is not supported by substantial evidence; the ALJ failed to consider the documentary evidence that the tenant submitted; and he did not submit copies of his tax returns as he did not wish to have his personal financial information publicly disclosed.

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Mosbrucker, Marshall dissenting)

H. 2159-B Lombard

AL130028

The tenant's petition alleging an unlawful increase in rent was granted because the ALJ found that new Certificates of Occupancy issued in 1997 and 2002 pertained to an addition to the building and not to the tenant's unit and therefore the building is not exempt under Costa-Hawkins. On appeal, the landlord maintains that: the hearing should have been continued due to pending litigation between the landlord and the City regarding the

property; and the tenant failed to meet his burden of proving that his unit was part of the original construction of the building in 1930.

MSC: To deny the appeal. (Marshall/Mosbrucker: 5-0)

I. 3815-17 – 18th St.

AL130030 & -31

The tenant's petition alleging decreased housing services due to the loss of a storage space in the building was granted and the landlord was found liable to the tenant in the amount of \$5,137.08. On appeal, the landlord argues that: storage was not included as a housing service at the inception of the tenancy because it is a prohibited use due to the lack of fire sprinklers; if storage had been included, the tenant would have ensured it was specified in the lease; and the tenant should not have been found credible by the Administrative Law Judge. The landlord also appeals the decision on the grounds of financial hardship.

MSC: To deny the appeal on the merits except to remand the case for a supplemental hearing to determine the proper method of calculating the value of the housing service in light of the tenant's rent history.
(Mosbrucker/Marshall: 5-0)

MSC: To accept the appeal and remand the case for a hearing on the landlord's claim of financial hardship. (Murphy/Gruber: 4-1; Mosbrucker dissenting)

J. 2238 Vicente, Apt. 3

AT130033

The tenant's petition alleging numerous habitability defects on the premises was denied because the ALJ found that the landlord effectuated repairs in a reasonable amount of time, was not given notice of the conditions or the problems were not substantial. The tenant appeals, maintaining that: the landlord was on notice of the problems because she told his broker, who wrote them down and said he gave the list to the landlord; and the landlord refused to make any repairs.

MSC: To deny the appeal. (Murphy/Mosbrucker: 5-0)

K. 1186 Fulton

AL130032

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$4,225.80. On appeal, the Master Tenant claims that: she was prejudiced by the subtenant's late submission; the ALJ erred in the Decision and failed to consider her credible evidence; and the ALJ did not sufficiently credit the amenities she provides.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

L. 2436 San Bruno Ave.

AL130034

The tenant's petition alleging unlawful rent increases was granted and the landlords were found liable to the tenants in the amount of \$5,825.00. The landlord appeals on the grounds that: the tenants have never lived on the premises and use the units to house employees and relatives, so the units are exempt from rent control pursuant to the case of Tappe v. Lieberman and Chan v. Antepenko; the occupants of the units are licensees and not tenants; the subject units are part of the commercial rental agreement between the landlords and the tenant; and there is no commercial rent control pursuant to State law.

MSC: To accept the appeal and remand the case for a supplemental hearing on the issue of whether these units are exempt from the Rent Ordinance.
(Mosbrucker/Marshall: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. Copies of articles from the S.F. Examiner, BeyondChron, the S.F. Public Press, the S.F. Bay Guardian and the Sacramento Bee.

B. The office workload statistics for the month of February, 2013.

C. A copy of the newly designed outreach ad by Rent Board Supervisor Jennifer Rakowski that will be going up in Muni buses.

VII. Director's Report

Executive Director Wolf told the Board that the Rent Board's outreach program on Muni buses is continuing and ads in three languages will be placed in all above-ground buses within the next few weeks. She also let them know that in conjunction with the passage of the Mandatory Soft Story Retrofit Ordinance, the Rent Board's hardship provisions are being examined and Senior Staff has been asked to provide technical expertise as to how the provisions could be streamlined.

VIII. Old Business

A. Assembly Bill 1925 (Civil Code Section 1947.9)

Senior ALJ Tim Lee told the Board that the Department received 3 notices for evictions of less than 20 days for capital improvement work by the same landlord. The tenants in those buildings signed agreements to temporarily vacate and were provided with 3 options as to temporary housing or per diem compensation. Senior Staff will continue to keep the Board apprised as to any issues arising from the change in the law regarding the amount of relocation payments.

B. Rules and Regulations Section 12.19

At the April 16th meeting, the Board requested staff to draft an amendment to Rules and Regulations Section 12.19 to state how landlords may notify tenants displaced by fire or other disaster that the unit is ready for re-occupancy. Specifically, the Board wanted to amend Section 12.19(a) to add the following language underlined below:

Section 12.19 Displacements

(a) If a tenant is forced to vacate her/his unit due to fire or other disaster, the landlord shall, within 30 days of completion of repairs to the unit, offer the same unit to that tenant under the same terms Other and conditions as existed prior to her/his displacement. The landlord's offer shall be sent to the address provided by the tenant. If the tenant has not provided an address, the offer shall be sent to the unit from which the tenant was displaced and to any other address of the tenant of which the landlord has actual knowledge.

The Board also wanted the above amendment to be prospective only to apply to mailings required by Section 12.19(a) after the effective date of the amendment. Since amendments to the Board's regulations are effective upon adoption unless otherwise specified by the Board, such prospective application would occur upon adoption.

The Board continued this issue in order for Senior ALJ to draft the requested language, which will be discussed at the next meeting.

IV. Remarks from the Public (cont.)

D. Susan Whetzel, the tenant in the case at 3815-17 – 18th St. (AL130030 & -31), inquired as to the landlord hardship appeal process.

IX. Calendar Items

May 14, 2013

8 appeal considerations

Old Business:

A. AB 1925 (Civil Code Section 1947.9)

B. Rules and Regs. Section 12.19

X. Adjournment

President Gruber adjourned the meeting at 7:50 p.m.

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City and County of San Francisco



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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, May 14, 2013
at 6:00 p.m.

05-09-13P01:14 RCVD

25 Van Ness Avenue, Suite 70, Lower Level

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MAY - 9 2013

SAN FRANCISCO
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I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. .914 Wisconsin #1

AL130041

The Master Tenant appeals the decision finding liability for overcharges due to the subtenant paying more rent to the Master Tenant than the Master Tenant is paying to the landlord.

B. 1175 Francisco

AL130039

The landlord appeals the dismissal of his petition for certification of capital improvement costs due to his failure to appear at the hearing.

C. 449-A Duboce

AT130043

One tenant appeals the decision certifying capital improvement costs.

D. 615 Guerrero #5

AL130037

The landlord appeals the decision granting claims of decreased housing services.

E. 3721 - 25th St. #6

AT130038

The tenant appeals the decision finding that she is not a "Tenant in Occupancy" pursuant to Rules Section 1.21.

F. 608 Sanchez

AL130036

The landlord appeals the decision granting a claim of unlawful rent increase.

G. 43 Norton St.

AT130040

The tenants appeal the determination that they do not have protected status from an owner move-in eviction during the school year due to the presence of a minor child in the unit.

H. 46 Belvedere

AT130042

The tenant appeals the decision finding that a Costa-Hawkins rent increase is warranted and decreased housing services claims are barred by the Golden Gateway decision.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Assembly Bill 1925 (Civil Code Section 1947.9)

B. Rules and Regulations Section 12.19

IV. Remarks from the Public (cont.)

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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, May 14, 2013

at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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JUN - 6 2013

SAN FRANCISCO
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I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Gruber; Hurley; Mosbrucker; Murphy;
Qian.
Commissioners not Present: Dandillaya; Mosser.
Staff Present: Gartzman; Wolf.

Commissioner Marshall appeared on the record at 6:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of April 16, 2013.
(Mosbrucker/Beard: 5-0)

IV. Remarks from the Public

A. Tenant Peter Doty of 46 Belvedere (AT130042) told the Board that the Administrative Law Judge's (ALJ's) summary of his arguments that a Costa-Hawkins rent increase is not warranted in his case was incomplete.

B. Sarah Clivan spoke on behalf of Peter Doty, saying that he is an "upstanding citizen."

C. James Hoy Driscoll, attorney for the tenant in the case at 43 Norton Street (AT130040), told the Board that his client, who was not represented at the hearing, is a Latin American immigrant with limited English skills. Mr. Driscoll said that the ALJ did not make sure that the tenant understood what was being said, and then found him not credible

due to inconsistencies in his testimony. Mr. Driscoll also said that the ALJ gave no weight to the tenant's documents, but gave "unwarranted" credence to the landlord's.

D. Landlord Ulises Bello said that the tenant in the case at 43 Norton Street spoke fluent English at the hearing and that his bilingual son was also present. Mr. Bello asked that the Board deny the tenant's appeal.

E. Landlord Jon Kouba spoke to the dismissal of his petition in the case concerning 1175 Francisco (AL130039) and said that his attorney, Dave Wasserman, was not present at the meeting.

V. Consideration of Appeals

A. 914 Wisconsin #1

AL130041

The Master Tenant's appeal was filed approximately four and one-half months late because the tenant has moved to Europe and only periodically has his mail forwarded.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Marshall: 5-0)

The subtenant's petition seeking a determination as to whether he paid more rent to the Master Tenant than the Master Tenant paid the landlord was granted and the Master Tenant was found liable to the subtenant in the amount of \$2,000.00. The Master Tenant failed to appear at the hearing and alleges on the appeal that he failed to receive notice because he now resides in Europe.

MSC: To accept the appeal and remand the case for a new hearing; should the Master Tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

B. 1175 Francisco

AL130039

The landlord's petition for certification of capital improvement costs was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the landlord claims to have been ill on the day of the hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Marshall/Murphy: 5-0)

C. 449-A Duboce

AT130043

The landlord's petition seeking certification of the costs of a new roof to two of four units was granted, resulting in a monthly passthrough in the amount of \$69.04. One tenant appeals the decision on the grounds that a portion of the work was done on a porch deck that he does not have access to.

MSC: To deny the appeal. (Marshall/Murphy: 5-0)

D. 615 Guerrero #5

AL130037

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$2,283.70. On appeal, the landlord claims that: she was too ill to participate in the scheduled mediation and has been denied due process; the decision is confusing; the tenants failed to timely notify her of the repairs that were needed; and the tenants lied and failed to meet their burden of proof.

MSC: To recuse Commissioner Crow from consideration of this appeal.
(Mosbrucker/Murphy: 5-0)

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

E. 3721 – 25th St. #6

AT130038

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted as the ALJ found that the subject unit is not the tenant's principal place of residence. On appeal, the tenant maintains that: the decision is based on hearsay; she has family and business obligations that require that she spend a substantial amount of time in Maryland; the evidence shows that none of the properties she owns in Maryland constitute a principal place of residence; the landlord knowingly failed to provide the tenant's contact information to the Rent Board so that the tenant did not receive the Notice of Hearing; and the subject unit is still her principal place of residence.

MSC: To accept the appeal and remand the case for a new hearing; should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Mosbrucker/Marshall: 5-0)

F. 608 Sanchez

AL130036

The landlord's appeal was filed a month late because the landlord allegedly did not receive notice of the hearing or a copy of the decision and attaches the requisite Declaration of Non-Receipt of Notice of Hearing or Decision.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Marshall: 5-0)

The tenant's petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$1,095.00. The landlord alleges non-receipt of the Notice of Hearing and also claims that: the tenant mis-represented the facts; the tenant was originally a guest, and not a tenant; and the decision is inequitable because the tenant lived in her home rent-free for 17 months.

MSC: To accept the appeal and remand the case for a new hearing.
(Mosbrucker/Marshall: 5-0)

G. 43 Norton St.

AT130040

The landlord filed a petition seeking a determination of the tenants' claim of protected status from an owner move-in eviction during the school year due to the presence of a minor child in the unit. The ALJ found that the tenants had failed to prove that the child resided in the unit and that the tenants therefore do not have protected status. On appeal, the tenants explain that their testimony was not considered credible due to cultural biases and because English is not their native language and they were prejudiced because they were not represented by competent counsel. The tenants also claim that the ALJ failed to properly consider the documentary evidence they provided.

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Marshall, Mosbrucker dissenting)

H. 46 Belvedere

AT130042

The tenant's petition alleging decreased housing services and an unlawful rent increase was denied because the ALJ found that the tenant is a subtenant and not a co-tenant and therefore the increase is warranted under Costa-Hawkins; and the claims pertaining to the construction of a new garage in the building are barred by the Golden Gateway decision. The tenant appeals on the grounds that: the decision contains factual inaccuracies and omits important relevant evidence; he is a co-tenant and not a subtenant; the other occupant of the unit did not actually reside on the premises; the construction work was not necessary; he had established a landlord-tenant relationship with the prior owner of the property; and the prior and current owners' inaction waived their right to a Costa-Hawkins rent increase.

MSC: To deny the appeal on the issue of the Costa-Hawkins rent increase but to accept the appeal and remand the case on the issue of whether the tenant's rent reduction claim for loss of quiet enjoyment of his unit is barred by the Golden Gateway decision; a hearing will be held only if necessary. (Mosbrucker/Murphy: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The Department's workload statistics for the month of March, 2013.

B. Articles from the S.F. Examiner, BeyondChron, the San Francisco Public Press, the Small Property Owners of San Francisco Institute News, CapitolAlert, the S.F. Chronicle, the New York Times and the Apartment Owners Association of California News and Buyers Guide.

C. Copies of the Decisions in the cases of Drolapas and Sons, L.P. v. S.F. Rent Board (CPF-12-511944) and Hal 347 Eddy SF, LLC v. S.F. Rent Board (CPF-11-511782).

VII. Director's Report

Executive Director Wolf told the Board about the many outreach activities and events staff has been involved in in recent months. Senior ALJ Tim Lee told the Board that, in the Drolopas and Hall decisions, Judge Quidachay held that minors who move into the unit with their families are considered original occupants or pre-1/1/96 subtenants and, therefore, no Costa-Hawkins increase is warranted when their parents no longer permanently reside in the unit. It is possible that these decisions will be appealed.

VIII. Old Business

A. Assembly Bill 1925 (Civil Code Section 1947.9)

Senior ALJ Sandy Gartzman told the Board that the Department received one additional notice for an eviction of less than 20 days for capital improvement work. Ms. Gartzman reported that staff gets a lot of questions regarding the new law, and that Senior Staff will keep the Board informed as to possible implementation problems in case clarifying regulations are needed.

B. Rules and Regulations Section 12.19

At the April 16th meeting, the Board requested staff to draft an amendment to Rules and Regulations Section 12.19 to state how landlords may notify tenants displaced by fire or other disaster that the unit is ready for re-occupancy. Specifically, the Board wanted to amend Section 12.19(a) to add the following language underlined below:

Section 12.19 Displacements

(a) If a tenant is forced to vacate her/his unit due to fire or other disaster, the landlord shall, within 30 days of completion of repairs to the unit, offer the same unit to that tenant under the same terms Other and conditions as existed prior to her/his displacement. The landlord's offer shall be sent to the address provided by the tenant. If the tenant has not provided an address, the offer shall be sent to the unit from which the tenant was displaced and to any other address of the tenant of which the landlord has actual knowledge.

The Board also wanted the above amendment to be prospective only to apply to mailings required by Section 12.19(a) after the effective date of the amendment. Since amendments to the Board's regulations are effective upon adoption unless otherwise specified by the Board, such prospective application would occur upon adoption.

The Board discussed the proposed language. Commissioner Mosbrucker said that the Tenant Bar would like to also require that any e-mail addresses of which the landlord is aware be included. With that addition, the Board passed the following motion:

MSC: To put the proposed amendment to Rules and Regulations Section 12.19 out for Public Hearing at the meeting on June 11, 2013.
(Beard/Marshall: 5-0)

IX. Calendar Items

June 11, 2013

10 appeal considerations

7:00 Public Hearing: Proposed Amendments to Rules Section 12.19

Old Business: AB 1925 (Civil Code §1947.9)

X. Adjournment

President Gruber adjourned the meeting at 7:00 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.

May 24, 2013

NOTICE OF PUBLIC HEARING

DATE:	June 11, 2013
TIME:	7:00 P.M.
PLACE:	25 VAN NESS AVENUE (AT MARKET ST.) SUITE 70, LOWER LEVEL SAN FRANCISCO, CALIFORNIA

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON A PROPOSED AMENDMENT TO RULES AND REGULATIONS SECTION 12.19. THE INTENT OF THE AMENDMENT IS TO STATE HOW LANDLORDS SHALL NOTIFY TENANTS DISPLACED BY FIRE OR OTHER DISASTER THAT THE UNIT IS READY FOR REOCCUPANCY.

You may either comment at the Public Hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department no later than **5 p.m. on Tuesday, June 4, 2013**, so that the Commissioners can be mailed your comments and review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 13 copies of your comments in order to facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing.

**PROPOSED AMENDMENT TO THE RENT BOARD RULES AND REGULATIONS
REGARDING NOTICE TO TENANT OF COMPLETION OF REPAIRS
FOLLOWING TENANT DISPLACEMENT FROM THE UNIT DUE TO FIRE OR
OTHER DISASTER**

[additions in double underline]

Section 12.19 Other Displacements

(a) If a tenant is forced to vacate her/his unit due to fire or other disaster, the landlord shall, within 30 days of completion of repairs to the unit, offer the same unit to that tenant under the same terms and conditions as existed prior to her/his displacement. The landlord's offer shall be sent to the address provided by the tenant. If the tenant has not provided an address, the offer shall be sent to the unit from which the tenant was displaced and to any other address of the tenant of which the landlord has actual knowledge, including electronic mail (e-mail) addresses.

(b) The tenant shall have 30 days from receipt of the landlord's offer to notify the landlord of acceptance or rejection of the offer and, if accepted, shall reoccupy the unit within 45 days of receipt of the landlord's offer.

(c) However, the cost of capital improvements which are necessary before rerenting a unit which was damaged or destroyed as set forth in subsection (a) above, which cost was not reimbursed by insurance proceeds or by any other means (such as a satisfied judgment) may be passed through to the tenant by utilization of the capital improvement petition process as set forth in Part 7 above. Any rent increase under this section would require that a 30-day notice be served upon the tenant(s).

(d) The landlord who attempts to rent a unit, but refuses to allow a tenant to return to her/his home under this section shall have wrongfully endeavored to recover or wrongfully recovered said tenant's rental unit in violation of Section 37.9 of the Ordinance and shall be liable to the displaced tenants for actual and punitive damages as provided by Ordinance Section 37.9(f). This remedy shall be in addition to any other remedy available to the tenant under the Rent Ordinance.

05-24-13A11:06 RCVD

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KENT QIAN

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, June 11, 2013
at 6:00 p.m.

06-06-13A1:1:47 RCVD

25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

GOVERNMENT
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II. Roll Call

JUN - 6 2013

III. Approval of the Minutes

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IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 925 Pierce #7

AT130052

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 449 Duboce #A

AT130054

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 1350 - 44th Ave.

AT130053

The tenant appeals the dismissal of her petition alleging that she paid a disproportional share of the rent due to her failure to appear at the hearing.

D. 678 Oak St.

AL130044

The landlord appeals the decision granting a claim of decreased housing services.

E. 922 Post #507

AL130046 & AT130047

The landlord and tenant both appeal the decision denying a claim of unlawful rent increase but granting a claim of decreased housing services due to alleged excessive noise from a neighboring unit.

F. 112 Columbus

AL130050

The landlord appeals the decision denying a second Petition for Extension of Time to do Capital Improvement Work.

G. 339 Vienna St.

AT130049

The tenant appeals the decision denying his claim of decreased housing services and unlawful rent increase because he was found to be a lodger, and not a tenant.

H. 450 Masonic #6

AT130048

The tenant appeals the decision denying her claim of unlawful rent increases.

I. 1361 Filbert

AL130045

The landlord appeals the decision granting rent overpayments, arguing that the premises should be considered exempt prior to the passage of Proposition I.

J. 615 Guerrero #2

AL130051

The landlord appeals the decision granting a claim of decreased housing services.

VI. Public Hearing

7:00 Proposed Amendments to Rules and Regulations Section 12.19

VII. Communications

VIII. Director's Report

IX. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XI. Adjournment

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.



ACCESSIBLE MEETING POLICY

Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4628 to place your specific request. Late requests will be honored if possible.

如果在開會前預早至少72小時提出申請，就可以使用我們的翻譯服務、音量增強服務或其他開會方式。如果你提出申請，我們也可以提供美式手語譯員。請致電252-4628向我們申請你想要的服務。如果遲了申請，我們會盡量安排。

Se pueden obtener servicios de traduccion, ampliacion de sonida, u otras formas de presentacion si se solicitan por lo menos 72 horas antes de la reunion. Llame al 252-4628 para hacer su solicitud.

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4628 at least 72 hours prior to the meeting.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. All MUNI Metro lines at Van Ness and Market Street are accessible. For other accessible MUNI lines serving this location and information about MUNI accessible services, call 3-1-1 from San Francisco or (415) 701-2311 from other areas.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Robert Collins has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) assures that deliberations are conducted before the people and that City operations are open to the people's review.

For information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact the Administrator by mail to: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102; by phone at (415) 554-7724; by fax at (415) 554-7854; or by email at sof@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance from the Administrator or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, found at <http://www.sfbos.org/sunshine>.



DAVID GRUBER
PRESIDENT

BROOKS BEARD
DAVE CROW
SHOBA DANDILLAYA
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BARTHOLOMEW MURPHY
KENT QIAN

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, June 11, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Gruber called the meeting to order at 6:07 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hurley; Mosbrucker;
Mosser; Qian.
Commissioners not Present: Beard; Marshall.
Staff Present: Gartzman; Wolf.

Commissioner Murphy appeared on the record at 6:32 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 14, 2013
(Hurley/Qian: 5-0)

IV. Remarks from the Public

A. Tenant Carol Toy of 450 Masonic #6 (AT130048) told the Board that she was "put off" by the Administrative Law Judge's use of the word "traditionally" at her hearing. She said that she was told to provide 2 copies of a 27-page document and that "this is the time to share."

B. Tenant Jon Ving of 112 Columbus (AL130050) told the Board that he is moving back in to the building now that it's been renovated. Mr. Ving asked whether the landlord could impose new rules, including a prohibition on smoking.

V. Consideration of Appeals

A. 925 Pierce #7

AT130052

The landlord's petition for certification of the costs of seismic retrofit work to seven of twelve units was granted, resulting in a monthly passthrough in the amount of \$21.21. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Qian/Mosbrucker: 5-0)

B. 449 Duboce #A

AT130054

The landlord's petition for certification of the costs of a new roof to two of four units was granted, resulting in a monthly passthrough in the amount of \$90.23. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Qian/Mosbrucker: 5-0)

C. 1350 – 44th Ave.

AT130053

The tenant's petition alleging that she paid a disproportional share of the rent was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received notice of the hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing; should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Mosbrucker/Qian: 5-0)

D. 678 Oak St.

AL130044

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$13,142.50. The landlord appeals on the grounds that: the landlord is not responsible for the fact that the tenant's car scrapes when entering the garage; the amounts of the rent reductions are unreasonable; the landlord's objective evidence was ignored in favor of the tenants' self-serving testimony; the fireplace was merely decorative and provides no heat; the landlord's items in the garage did not interfere with the tenants' use of the space; maintenance of the common areas is provided; and the garage entry has been repaired and the rent reduction should cease as of April.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

E. 922 Post #507

AL130046 & AT130047

The tenant's petition alleging unlawful rent increases was denied because the ALJ found that the landlord had not promised not to impose annual and banked rent increases during

the tenancy. The tenant's decreased housing services claim due to excessive noise from a neighboring unit was granted, however, and the landlord was found liable to the tenant in the amount of \$364.00. The landlord and tenant both appeal the decision. The landlord claims that: the ALJ omitted evidence of the landlord's numerous attempts to deal with the noise problem; and the tenant failed to cooperate in ameliorating the problem. The tenant asserts that: he was assured by the building manager that there would be no rent increases of any kind if he rehabilitated the unit; he agreed to the rent increases under threat of eviction; he incurred tremendous expenses in repairing the apartment; and, as he is not a native English speaker, he did not understand all of the testimony proffered at the hearing and did not have necessary medication with him.

MSF: To accept the tenant's appeal and remand the case to the Administrative Law Judge only to grant the tenant's claim of unlawful rent increases.
(Mosbrucker/Qian: 2-3; Dandillaya, Gruber, Murphy dissenting)

MSC: To deny both the landlord's and tenant's appeals. (Murphy/Gruber: 3-2; Mosbrucker, Qian dissenting)

F. 112 Columbus

AL130050

The landlord's petition for a second extension of time to complete capital improvement work was denied because the landlord failed to file the petition immediately after becoming aware that the work would take longer than the amount of time granted in the landlord's original petition. The landlord appeals the decision on the grounds that: the landlord filed the second petition prior to the expiration of the original extension date; no tenant objected to the second extension request; and none of the tenants provided evidence of any resulting hardship; and the ALJ exceeded his authority in denying the petition, which could be construed as having been immediately filed. In the alternative, the landlord asks that the Board waive its Rules in the interest of justice and to prevent hardship to the landlord.

MSC: To deny the appeal. (Mosbrucker/Qian: 5-0)

G. 339 Vienna St.

AT130049

The tenant's petition alleging decreased housing services and an unlawful rent increase was denied because the ALJ found that the tenant was a lodger for most of the tenancy, and therefore not under the jurisdiction of the Rent Board. On appeal, the tenant claims that: the ALJ was biased against him and made factual errors in the decision; his rent was raised while his services were reduced; and additional occupants in the unit reduced his living space and access to amenities in the unit.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the issue of whether there were any additional subtenants in the unit besides Jared Cook during the relevant time periods; a hearing will be held only if necessary. (Mosbrucker/Qian: 5-0)

H. 450 Masonic #6

AT130048

The tenant's petition alleging unlawful rent increases was denied. On appeal, the tenant maintains that the ALJ's calculations are in error and the rent increase should be null and void.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a necessary Technical Correction. (Hurley/Gruber: 5-0)

I. 1361 Filbert

AL130045

The tenant's petition requesting a determination of her proper base rent was granted and the landlord was found liable to the tenant in the amount of \$22,568.45 due to unlawful rent increases. The landlord appeals the decision on the grounds that: the premises should be considered exempt from Rent Board jurisdiction until the passage of Proposition I in 1994, because the owner lives in the other single family dwelling on the same lot, and the intent of the exemption was to protect small property owners who lived in proximity to their tenants; the Board's policy regarding owner occupancy exemption should be consistent with the single family exemption under Costa-Hawkins; and the decision is unfair and should be barred by the equitable doctrine of laches.

Prior to the meeting, the landlord's attorney submitted a request for postponement of the appeal consideration in order to conduct legal research at the Rent Board office regarding the interpretation of exemption prior to the passage of Proposition I in 1994. It was the consensus of the Board to grant the landlord's request, with a briefing schedule to be established by staff.

J. 615 Guerrero #2

AL130051

The landlord's appeal was filed approximately two months late because a decision regarding another unit at the property was issued two days earlier and the landlord was overwhelmed and unable to respond to both in a timely fashion.

MSC: To recuse Commissioner Crow from consideration of the appeal.
(Murphy/Mosbrucker: 5-0)

MSC: To find good cause for the late filing of the appeal. (Murphy/Gruber: 4-1;
Mosbrucker dissenting)

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$2,950.00 due to the removal of street access to the unit. On appeal, the landlord claims that: the tenant lied under oath and conspired against her with another tenant in the building; the service was over-valued by the ALJ; the entry door had to be sealed for safety reasons; she was too ill to attend the hearing; and the service has been restored.

MSC: To deny the appeal. (Mosbrucker/Qian: 4-1; Gruber dissenting)

VI. Public Hearing

Proposed Amendments to Rules and Regulations Section 12.19

The Board had calendared a Public Hearing for this evening's meeting to consider proposed amendments to Rules and Regulations Section 12.19 to state how landlords may notify tenants displaced by fire or other disaster that the unit is ready for re-occupancy. Upon review of the language of the Section, Senior Administrative Law Judge Sandy Gartzman realized that subsection (c) still refers to the landlord's obligation to serve a "30-day notice, whereas Civil Code Section 827 now requires a 60-day notice in certain instances. The Board agreed to continue the Public Hearing to a future meeting in order to conform the entire Section to State law.

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of April, 2013.

B. Articles from the S.F. Examiner, the S.F. Chronicle, the New York Times, the Financial Times, the Bay Guardian, KQED's newsfix, and BeyondChron.

VIII. Director's Report

Executive Director Wolf told the Board that legislation concerning the ability of TIC owners to convert to condominiums passed at the full Board of Supervisors on an 8-3 vote this afternoon. She also let the Board know that she will be on vacation for 3 weeks commencing June 17th and that Deputy Director Robert Collins will be going before the Budget and Finance Committee for approval of the departmental budget.

IX. Old Business

AB 1925

Senior ALJ Gartzman told the Board that there were no new notices for an eviction of less than 20 days for capital improvement work since the last Board meeting.

IV. Remarks from the Public (cont.)

C. Carol Toy said that the ALJ didn't understand the points that she raised, that it is impossible to go back and infer someone's intent and that the prior landlord did not want to impose banked rent increases.

X. Calendar Items

July 16, 2013

12 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 7:07 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.

City and County of San Francisco



DAVID GRUBER
PRESIDENT

BROOKS BEARD

DAVE CROW

SHOBA DANDILLAYA

JIM HURLEY

POLLY MARSHALL

CATHY MOSBRUCKER

NEVEO MOSSER

BARTHOLOMEW MURPHY

KENT QIAN

Residential Rent Stabilization
and Arbitration Board

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, July 16, 2013
at 6:00 p.m.

07-11-13P12:36 RCVD

25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

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JUL 11 2013

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 815 Rhode Island

AT130067

The tenant appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

B. 80 Crestline Dr. #2

AT130065

One tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

C. 905 Ashbury #1

AL130061

The landlord appeals the decision granting a claim of decreased housing services alleging non-receipt of notice of hearing.

D. 1500 Clement #201

AT130062

The tenant appeals the decision denying a claim of decreased housing services.

E. 595 – 22nd Ave.

AL130058

The landlord appeals the decision partially granting certification of capital improvement costs.

F. 635 Minna #B

AL130059

The landlord appeals the decision partially granting claims of decreased housing services.

G. 1361 Filbert

AL130045
(post. From 6/11/13)

The landlord appeals the decision ordering the refund of rent overpayments due to the property not being exempt prior to the passage of Proposition I or at any time thereafter.

H. 142 Tiffany Ave.

AL130060

The landlord appeals the decision finding that no rent increase is authorized under Rules §1.21 because the tenants reside in two reasonably proximate units.

I. 322 Frederick #1

AL130063

The Master Tenant appeals the decision granting a §6.15C(3) disproportional share of rent claim but denying a claim of decreased housing services.

J. 1414 Polk St.

AT130056

The tenant appeals the decision finding that a Costa-Hawkins rent increase is warranted.

K. 1201 – 6th Ave. #6

AL130055

The landlord appeals the decision denying a rent increase based on comparable rents.

L. 17 Romolo Pl. #27

AL130064

The landlord appeals the decision partially granting claims of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.



ACCESSIBLE MEETING POLICY

Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4628 to place your specific request. Late requests will be honored if possible.

如果在開會前預早至少72小時提出申請，就可以使用我們的翻譯服務、音量增強服務或其他開會方式。如果你提出申請，我們也可以提供美式手語譯員。請致電252-4628向我們申請你想要的服務。如果遲了申請，我們會盡量安排。

Se pueden obtener servicios de traduccion, ampliacion de sonida, u otras formas de presentacion si se solicitan por lo menos 72 horas antes de la reunion. Llame al 252-4628 para hacer su solicitud.

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4628 at least 72 hours prior to the meeting.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. All MUNI Metro lines at Van Ness and Market Street are accessible. For other accessible MUNI lines serving this location and information about MUNI accessible services, call 3-1-1 from San Francisco or (415) 701-2311 from other areas.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Robert Collins has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) assures that deliberations are conducted before the people and that City operations are open to the people's review.

For information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact the Administrator by mail to: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102; by phone at (415) 554-7724; by fax at (415) 554-7854; or by email at soft@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance from the Administrator or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, found at <http://www.sfbos.org/sunshine>.



Edwin M. Lee
Mayor

Delene Wolf
Executive Director

DAVID GRUBER
PRESIDENT

BROOKS BEARD
DAVE CROW
SHOBA DANDILLAYA
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, July 16, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

GOVERNMENT
DOCUMENTS DEPT

SEP 13 2013

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Dandillaya; Gruber; Hurley; Marshall;
Mosbrucker; Mosser; Murphy.
Commissioners not Present: Qian.
Staff Present: Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of June 11, 2013.
(Mosbrucker/Crow: 5-0)

IV. Remarks from the Public

A. Jerrold Jacoby, the landlord in the case at 1361 Filbert (AL130045), told the Board that he believed the cottage on his lot was exempt from rent control because he lives in a two-unit building on the same property. This belief was furthered by the fact that the rental unit fee was not assessed on his property tax bill until after 1995. Mr. Jacoby said that he is not an "unscrupulous, rent-gouging landlord": he reduced the tenant's rent for two years due to hardship and did not raise her rent for 8 years. Mr. Jacoby told the Board that he is living on Social Security and that this is "like getting a citation for driving through a stop sign twenty-five years later."

B. Andrew Zacks, attorney for landlord Jerrold Jacoby, told the Board that his client was unrepresented at the underlying hearing in the case. Mr. Zacks has conducted research at the Rent Board Office and was unable to find any prior decisions on this issue. Mr. Zacks asked the Board to reconsider the decision, which may be "consistent with the

literal language but not the intent of the owner-occupancy exemption.

C. Attorney Daniel Conrad, representing the landlord in the case at 1201 – 6th Ave. (AL130055), acknowledged that he had given the Board “a lot of probate law.” Mr. Conrad told the Board that he was required to prove at the Rent Board that the rent had been set low due to fraud or mental incompetency on the part of the landlord and that the probate cases were necessary to show that he had met that threshold.

D. Attorney Karen Uchiyama, representing the landlord at 142 Tiffany Ave. (AL130060), told the Board that a married couple rented two units in the building from the resident manager 24 years apart. Ms. Uchiyama maintained that the “reasonably proximate” standard should require that the units be close together and used as a family in order for both to be covered by rent control. Ms. Uchiyama alleged that the wife's unit in this case is being used as a den or hobby room and that there is no bedroom per se. Ms. Uchiyama called the tenant's evidence “incredible” and said that the rent for both units is less than the market rent for one.

E. Tenant Judy Toupin of 142 Tiffany said that the landlord's attorney couldn't see her bed when she entered the unit because it is on a loft with clothes scattered around, “like a cocoon.” Ms. Toupin maintained that she uses the small, one-bedroom unit as a residence and not a business, although one room is a workshop.

F. Tenant Tayyab Siddiqui of 1414 Polk Street (AT130056) said that his petition alleging an unlawful rent increase was wrongfully denied because the Administrative Law Judge (ALJ) focused on credibility rather than the facts. Mr. Siddiqui also alleged that significant evidence he provided was not addressed.

G. Tenant John Toupin of 142 Tiffany told the Board that he is a veteran with service-connected sleep apnea and tinnitus, which made it hard for his wife to sleep. Mr. Toupin was “dead set against” the idea of separate units, but it has been beneficial for their marriage. Mr. Toupin said that the landlord's attorney photographed their possessions without permission and that her characterization of their belongings as “junk” is offensive. Mr. Toupin believes that “the landlord bought a rent controlled building and has to live with it.”

H. Attorney Michael Rossoff, representing the landlord at 1414 Polk, said that the ALJ spent over sixteen hours trying to decipher the tenant's evidence. Mr. Rossoff maintained that the tenant conspired with the Master Tenant to keep his subtenancy a secret and conceal the facts regarding his true identity. Mr. Rossoff also said that the tenant's appeal is a “re-hash,” and provides no new information.

I. Tenant Sam Rose of 905 Ashbury #1 (AL130061) told the Board that the issues in his unit are still on-going and that the landlord has multiple addresses, but notice of the hearing was sent to the address on his lease.

J. Sophie Lau, the landlord in the case at 1500 Clement (AT130062), told the Board that she provides heat to the tenants from 5-11 a.m. and 3-11 p.m., which is more than the law requires. Ms. Lau also maintained that she did not have sufficient time to respond to the tenant's appeal.

K. Greg Lindgren, the manager of 17 Romolo Place (AL130064), told the Board that the tenant is "trying to find issues that don't exist." Mr. Lindgren alleged that linen service had never been provided to the tenant and that there was no proof, only the tenant's testimony. Mr. Lindgren felt that the ALJ "gave the tenant something because she asked for so much."

V. Consideration of Appeals

A. 815 Rhode Island

AT130067

The landlord's petition for certification of the costs of a new sump pump to one of two units was granted, resulting in a monthly passthrough in the amount of \$7.38. The tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Murphy: 5-0)

B. 80 Crestline Dr. #2

AT130065

The landlord's petition for rent increases based on increased operating expenses was granted. The tenant in one unit appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Mosbrucker: 5-0)

C. 905 Ashbury #1

AL130061

The tenant's petition alleging decreased housing services due to the loss of quiet enjoyment of his unit was granted and the landlord, who failed to appear at the hearing, was found liable to the tenant in the amount of \$100.00 per month. On appeal, the landlord claims not to have received notice of the hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To recuse Commissioner Mosbrucker from consideration of this appeal. (Mosbrucker/Murphy: 5-0)

MSC: To accept the appeal and remand the case for a new hearing; should the landlord again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Murphy/Marshall: 5-0)

D. 1600 Clement #201

AT130062

The tenant's petition alleging decreased housing services was denied because the Administrative Law Judge (ALJ) found that the tenant had failed to prove that the landlords were not providing the level of heat required by the building code. On appeal, the tenant maintains that the landlord could have changed the boiler setting after the Inspector left and provides a petition signed by several tenants in the building attesting to a lack of heat in the evening hours.

MSC: To deny the appeal. (Murphy/Gruber: 4-1; Marshall dissenting)

E. 595 – 22nd Ave.

AL130058

The landlord's petition for certification of the costs of an exterior paint job to 6 of 14 units was granted, but a prior passthrough for exterior painting was discontinued. On appeal, the landlord claims that the two paint jobs did not overlap and the prior passthrough should not have been discontinued.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing. (Murphy/Gruber: 5-0)

F. 635 Minna #B

AL130059

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$2,550.00 for lack of a working refrigerator and freezer. On appeal, the landlord claims that: the parties signed a settlement agreement with a mutual release of all claims for the time period in question; the tenants were never without a working freezer; the refrigerator was only disabled for a 3-month period; and the tenants agreed to a \$100 per month rent reduction for the refrigerator problem, which they have already collected.

MSC: To deny the appeal. (Marshall/Mosbrucker: 5-0)

G. 1361 Filbert

AL130045
(post. From 6/11/13)

The tenant's petition requesting a determination of her proper base rent was granted and the landlord was found liable to the tenant in the amount of \$22,568.45 due to unlawful rent increases. The landlord appeals the decision on the grounds that: the premises should be considered exempt from Rent Board jurisdiction until the passage of Proposition I in 1994, because the owner lives in the other single family dwelling on the same lot, and the intent of the exemption was to protect small property owners who lived in proximity to their tenants; the Board's policy regarding owner occupancy exemption should be consistent with the single family exemption under Costa-Hawkins; and the decision is unfair and should be barred by the equitable doctrine of laches.

Prior to the June 11, 2013 meeting, the landlord's attorney submitted a request for postponement of the appeal consideration in order to conduct legal research at the Rent Board office regarding the interpretation of exemption prior to the passage of Proposition I

in 1994. It was the consensus of the Board to grant the landlord's request, provide a briefing schedule for the parties and reschedule the appeal for this evening's meeting. After further discussion, the board continued this matter in order for the landlord to augment his appeal with a hardship claim, if applicable, and in hopes that the parties would enter into settlement discussions.

H. 142 Tiffany Ave.

AL130060

The landlord's petition seeking a determination under Rules §1.21 was denied because the ALJ found that the tenants reside in two reasonably proximate units in the subject building as their principal place of residence and both units are therefore under the jurisdiction of the Rent Board. On appeal, the landlord argues that: the decision violates the spirit and purpose of the Regulation; the ALJ exhibited bias on behalf of the tenants; the tenants made changes to their living situation after the petition was filed; the tenants use both units primarily for storage; the former property manager was a friend who rented both units to them at below market rents; the tenants' claims were not credible; and the decision is unfair, unconstitutional and deprives the landlord of a fair return.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

I. 322 Frederick #1

AL130063

The subtenant's petition alleging decreased housing services was denied but a claim that he paid more than a proportional share of the rent was granted and the Master Tenant was found liable to the subtenant in the amount of \$4,367.06. The Master Tenant appeals on the grounds that: she did not have adequate time to respond to the subtenant's post-hearing submission; the subtenant did have use of the unit's driveway; since it is a two-car garage; the calculation of the value to the subtenant is incorrect; and extra sums collected went towards the electric bill and for rental of a partially furnished apartment.

MSC: To recuse Commissioner Crow from consideration of this appeal.
(Marshall/Mosbrucker: 5-0)

MSC: To deny the appeal. (Marshall/Mosbrucker: 5-0)

J. 1414 Polk

AT130056

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the tenant petitioner is a post-1/1/1996 subtenant and the original occupants no longer permanently reside on the premises. The tenant appeals the decision on the grounds that: the landlord made false statements at the hearing and in their documentary evidence; the ALJ did not give sufficient weight to evidence that favored the tenant, such as the repair requests he negotiated with the landlord; the landlord acquiesced to his tenancy over many years but was bullied by his property manager into renegeing on their agreement; the 6.14 notice was not timely served; the landlord accepted rent from him in addition to performing requested repairs, which makes him a tenant; and the effective date of the rent increase is incorrectly stated in the decision.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

K. 1201 – 6th Ave. #6

AL130055

The landlord's petition for a rent increase from \$500.00 to \$2,400.00 based on comparable rents was denied because the ALJ found that the tenant's below market rent was not set as a result of extraordinary circumstances beyond the landlord's business model. On appeal, the landlord's conservator claims that: there is a distinction between the landlord allowing friends to pay below market rents and the tenant paying a very low rent, since the tenant had a fiduciary relationship with the landlord; the tenant's testimony was self-serving and not credible; the landlord was mentally incompetent at the inception of the tenancy; and the tenant exerted undue influence over the landlord.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to find that a rent increase based comparable rents is warranted based on the facts of this case; a hearing will be held only if necessary. (Murphy/Gruber: 4-1; Beard dissenting)

L. 17 Romolo Pl. #27

AL130064

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,434.65 due to second-hand smoke exposure and discontinuation of linen service. On appeal, the landlord maintains that: the tenant failed to provide notice of second-hand smoke entering her unit; they have always promptly responded to the tenant's requests; the landlord cannot guarantee a smoke-free facility; the tenant failed to prove that linen service was provided at the inception of the tenancy; and the tenant's testimony should not be found credible.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to consider the new evidence submitted by the parties. (Murphy/Gruber: 4-1; Mosbrucker dissenting)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of April, 2013.

B. Articles from the S.F. Apartment Magazine, BeyondChron, the S.F. Chronicle and the Los Angeles Times.

VII. Director's Report

Executive Director Wolf let the Board know that the Budget Committee of the Board of Supervisors approved the Department's budget.

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

Senior ALJ Tim Lee told the Board that there were no new notices for an eviction of less than 20 days for capital improvement work for the third month in a row.

IV. Remarks from the Public (cont.)

L. Attorney Daniel Conrad asked the Board whether a remand hearing was necessary for the case at 1201 – 6th Ave. since the parties had stipulated as to the market rent for the unit. Mr. Conrad also expressed his opinion that this was a “hard case.”

M. Greg Lindgren of 17 Romolo Pl. thanked the Commissioners for their work. Mr. Lindgren said that the tenant is coming up with new allegations, and he is going to have to go back and get sworn statements from former employees attesting to the fact that linen service has never been provided.

IX. Calendar Items

September 17, 2013

14 appeal considerations

Public Hearing: Rules §12.19 (re-scheduled from August 13, 2013)

Old Business: AB 1925 (Civil Code §1947.9)

X. Adjournment

President Gruber adjourned the meeting at 7:40 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.

07-10-13P01312 (RM)

JULY 10, 2013

GOVERNMENT
DOCUMENTS DEPT

JUL 10 2013

NOTICE OF PUBLIC HEARING

SAN FRANCISCO
PUBLIC LIBRARY

DATE: August 13, 2013

TIME: 7:00 P.M.

PLACE: 25 VAN NESS AVENUE (AT MARKET ST.)
SUITE 70, LOWER LEVEL
SAN FRANCISCO, CALIFORNIA

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON PROPOSED AMENDMENTS TO RULES AND REGULATIONS SECTION 12.19. THE INTENT OF THE AMENDMENTS IS (1) TO STATE HOW LANDLORDS SHALL NOTIFY TENANTS DISPLACED BY FIRE OR OTHER DISASTER THAT THE UNIT IS READY FOR REOCCUPANCY, AND (2) TO REQUIRE LANDLORDS WHO SEEK TO PASS THROUGH CAPITAL IMPROVEMENT COSTS FOR REPAIRING DAMAGE CAUSED BY FIRE OR OTHER DISASTER TO SERVE A NOTICE OF RENT INCREASE ON THE TENANT(S) IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTION 827.

You may either comment at the Public Hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department no later than 5 p.m. on Tuesday, August 6, 2013, so that the Commissioners can be mailed your comments and review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 13 copies of your comments in order to facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing.

PROPOSED AMENDMENTS TO THE RENT BOARD RULES AND
REGULATIONS REGARDING NOTICE TO TENANT OF COMPLETION OF
REPAIRS FOLLOWING TENANT DISPLACEMENT FROM THE UNIT DUE TO
FIRE OR OTHER DISASTER AND NOTICE TO TENANT OF RENT
INCREASE BASED ON CAPITAL IMPROVEMENT COSTS INCURRED TO
REPAIR DAMAGE CAUSED BY FIRE OR OTHER DISASTER
[additions in double underline; deletions in strikethrough]

Section 12.19 Other Displacements

(a) If a tenant is forced to vacate her/his unit due to fire or other disaster, the landlord shall, within 30 days of completion of repairs to the unit, offer the same unit to that tenant under the same terms and conditions as existed prior to her/his displacement. The landlord's offer shall be sent to the address provided by the tenant. If the tenant has not provided an address, the offer shall be sent to the unit from which the tenant was displaced and to any other address of the tenant of which the landlord has actual knowledge, including electronic mail (e-mail) addresses.

(b) The tenant shall have 30 days from receipt of the landlord's offer to notify the landlord of acceptance or rejection of the offer and, if accepted, shall reoccupy the unit within 45 days of receipt of the landlord's offer.

(c) However, the cost of capital improvements which are necessary before reentering a unit which was damaged or destroyed as set forth in subsection (a) above, which cost was not reimbursed by insurance proceeds or by any other means (such as a satisfied judgment) may be passed through to the tenant by utilization of the capital improvement petition process as set forth in Part 7 above. Any rent increase under this

section would require that a ~~30-day~~ notice be served upon the tenant(s) pursuant to California Civil Code Section 827.

(d) The landlord who attempts to rerent a unit, but refuses to allow a tenant to return to her/his home under this section shall have wrongfully endeavored to recover or wrongfully recovered said tenant's rental unit in violation of Section 37.9 of the Ordinance and shall be liable to the displaced tenants for actual and punitive damages as provided by Ordinance Section 37.9(f). This remedy shall be in addition to any other remedy available to the tenant under the Rent Ordinance.

GOVERNMENT
DOCUMENTS DEPT

JUL 26 2013

JULY 25, 2013

NOTICE OF PUBLIC HEARINGSAN FRANCISCO
PUBLIC LIBRARY

DATE:	September 17, 2013
TIME:	7:00 P.M.
PLACE:	25 VAN NESS AVENUE (AT MARKET ST.) SUITE 70, LOWER LEVEL SAN FRANCISCO, CALIFORNIA

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON PROPOSED AMENDMENTS TO RULES AND REGULATIONS SECTION 12.19. THE INTENT OF THE AMENDMENTS IS (1) TO STATE HOW LANDLORDS SHALL NOTIFY TENANTS DISPLACED BY FIRE OR OTHER DISASTER THAT THE UNIT IS READY FOR REOCCUPANCY, AND (2) TO REQUIRE LANDLORDS WHO SEEK TO PASS THROUGH CAPITAL IMPROVEMENT COSTS FOR REPAIRING DAMAGE CAUSED BY FIRE OR OTHER DISASTER TO SERVE A NOTICE OF RENT INCREASE ON THE TENANT(S) IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTION 827.

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PROPOSED AMENDMENTS TO THE RENT BOARD RULES AND
REGULATIONS REGARDING NOTICE TO TENANT OF COMPLETION OF
REPAIRS FOLLOWING TENANT DISPLACEMENT FROM THE UNIT DUE TO
FIRE OR OTHER DISASTER AND NOTICE TO TENANT OF RENT
INCREASE BASED ON CAPITAL IMPROVEMENT COSTS INCURRED TO
REPAIR DAMAGE CAUSED BY FIRE OR OTHER DISASTER
[additions in double underline; deletions in strikethrough]

Section 12.19 Other Displacements

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(b) The tenant shall have 30 days from receipt of the landlord's offer to notify the landlord of acceptance or rejection of the offer and, if accepted, shall reoccupy the unit within 45 days of receipt of the landlord's offer.

(c) However, the cost of capital improvements which are necessary before rerenting a unit which was damaged or destroyed as set forth in subsection (a) above, which cost was not reimbursed by insurance proceeds or by any other means (such as a satisfied judgment) may be passed through to the tenant by utilization of the capital improvement petition process as set forth in Part 7 above. Any rent increase under this

section would require that a ~~30-day~~ notice be served upon the tenant(s) pursuant to California Civil Code Section 827.

(d) The landlord who attempts to re-rent a unit, but refuses to allow a tenant to return to her/his home under this section shall have wrongfully endeavored to recover or wrongfully recovered said tenant's rental unit in violation of Section 37.9 of the Ordinance and shall be liable to the displaced tenants for actual and punitive damages as provided by Ordinance Section 37.9(f). This remedy shall be in addition to any other remedy available to the tenant under the Rent Ordinance.

City and County of San Francisco



DAVID GRUBER
PRESIDENT

BROOKS BEARD
DAVE CROW
SHOBA DANDILAYA
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

Residential Rent Stabilization
and Arbitration Board

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, September 17, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

99-13-13102-38 8895

GOVERNMENT
DOCUMENTS DEPT

SEP 13 2013

SAN FRANCISCO
PUBLIC LIBRARY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 811 – 14th St. #12

AT130070

One tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

B. 2428 Folsom

AL130083

The Master Tenant appeals the decision determining rent overpayments pursuant to Rules §6.15C(3) on the grounds of financial hardship.

C. 1244 Castro

AL130082

The landlord appeals the decision partially certifying capital improvement costs, but applying the "6-Month Rule" to one unit.

D. 36 Walter St.

AL130081

The landlord appeals the decision granting a claim of decreased housing services.

E. 8 Gough St.

AT130068

The subtenant appeals the decision determining the proportional share of the rent pursuant to Rules §6.15C(3).

F. 322 Frederick #1

AT130066

(re-scheduled from 8/13/13)

The tenant appeals the decision finding that he is not a "Tenant in Occupancy" of the subject unit.

G. 2085 Bush #507

AT130071

The tenant appeals the decision only partially granting a claim of decreased housing services.

H. 1361 Filbert

AL130045

(cont. from 7/16/13)

The landlord appeals the decision refunding rent overpayments, arguing that the premises should be considered exempt prior to the passage of Proposition I.

I. 165 Beacon

AT130072

The tenant appeals the decision granting a rent increase based on comparable rents.

J. 312 – 18th Ave. #1

AT130073

The tenant appeals the decision finding that a rent increase is warranted pursuant to Costa-Hawkins because the original tenant no longer permanently resides on the premises.

K. 1372 Pine St. #108

AT130074

The tenant appeals the decision denying a claim of decreased housing services due to alleged noise from an upstairs unit.

L. 300 Buchanan #403

AT130075 & -76

The tenant appeals the decision granting a rent increase based on comparable rents.

M. 3531 – 17th St.

AT130078

One tenant appeals the decision certifying capital improvement costs.

N. 2534 Washington

AL130079 & -80

The Master Tenant appeals the decision finding that the subtenant paid a disproportional share of the rent pursuant to Rules §6.15C(3).

VI. Public Hearing

7:00 Proposed Amendments to Rules and Regulations Section 12.19

VII. Communications

VIII. Director's Report

IX. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

Telephonic Testimony

XI. Calendar Items

XII. Adjournment

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City and County of San Francisco

Residential Rent Stabilization
and Arbitration BoardDAVID GRUBER
PRESIDENTBROOKS BEARD
DAVE CROW
SHOBA DANDILLAYA
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVED MOSSER
BARTHOLOMEW MURPHY
KENT QIAN**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**Tuesday, September 17, 2013
at 6:00 p.m.
25 Van Ness Avenue, Suite 70, Lower LevelEdwin M. Lee
MayorDelene Wolf
Executive DirectorGOVERNMENT
DOCUMENTS DEPT

OCT 1 0 2013

SAN FRANCISCO
PUBLIC LIBRARY**I. Call to Order**

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Marshall; Mosbrucker;
Mosser; Qian.
Commissioners not Present: Hurley; Murphy.
Staff Present: Lee; Wolf.

III. Approval of the MinutesMSC: To approve the Minutes of July 16, 2013.
(Mosbrucker/Marshall: 5-0)**IV. Remarks from the Public**

A. Pablo Carbajal, the Master Tenant at 2428 Folsom Street (AL130083), told the Board that he did not have enough money to pay the rent because the subtenant was withholding rent pursuant to the Decision of the Administrative Law Judge (ALJ).

B. Andrea Funsten, the subtenant at 2534 Washington (AL130079 & -80), said that she was paying \$2,000 in monthly rent for her room while the Master Tenant was only paying \$400 and "imposing crazy rules." Ms. Funsten told the Board that the Master Tenant has continued to overcharge four additional roommates, even though she knows that it's wrong.

C. Jennifer Ritchie, the Master Tenant at 2534 Washington, told the Board that the subsequent occupants of the unit would not be filing petitions at the Rent Board. She maintained that Andrea Funsten's claims are purely a personal attack that constitute

defamation and said that she will be going after Ms. Funston criminally for damage to her personal property.

V. Public Hearing

No members of the public appeared to speak on the proposed amendment to Rules and Regulations Section 12.19 to state how landlords may notify tenants displaced by fire or other disaster that the unit is ready for re-occupancy. After a brief discussion, the Board passed the following motion:

MSC: To pass the proposed amendment to Rules and Regulations Section 12.19. (Marshall/Gruber: 5-0)

The new language (underlined) is as follows below:

Section 12.19 Displacements

(a) If a tenant is forced to vacate her/his unit due to fire or other disaster, the landlord shall, within 30 days of completion of repairs to the unit, offer the same unit to that tenant under the same terms Other and conditions as existed prior to her/his displacement. The landlord's offer shall be sent to the address provided by the tenant. If the tenant has not provided an address, the offer shall be sent to the unit from which the tenant was displaced and to any other address of the tenant of which the landlord has actual knowledge, including electronic mail (e-mail) addresses.

VI. Consideration of Appeals

A. 811 – 14th St. #12

AT130070

The landlord's petition for rent increases based on increased operating expenses for all 12 units at the property was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Mosbrucker/Mosser: 5-0)

B. 2428 Folsom

AL130083

The Master Tenant's appeal was filed 4 months late because the Master Tenant did not know he could appeal the decision on the grounds of financial hardship.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Mosser: 5-0)

The tenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted on remand and the Master Tenant was found liable to the

subtenant in the amount of \$3,402.00. The Master Tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the Master Tenant's claim of financial hardship, but only if the amounts owing have not been fully recouped. (Mosbrucker/Marshall: 5-0)

C. 1244 Castro

AL130082

The landlord's petition for certification of capital improvement costs was granted except as to one unit, where the ALJ found that the tenant had moved in within 6 months of commencement of the work. On appeal, the landlord submits a copy of the tenant's original lease showing that the unit should not be subject to Rules §7.12(b) (the "6-Month Rule").

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the issue of the applicability of the 6-Month Rule to the tenant in unit 1244; a hearing will be held only if necessary. (Gruber/Mosser: 5-0)

D. 36 Walter St.

AL130081

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$3,180.00 due to the lack of a legal source of heat in the unit. On appeal, the landlord maintains that there are errors in the decision and requests a new hearing date in order to obtain legal counsel.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

E. 8 Gough St.

AT130068

The Master Tenant filed a petition seeking a determination as to the lawful proportional share of rent that the subtenant should be paying. On appeal, the subtenant maintains that: the Master Tenant should not be allowed to charge more for amenities since the subtenant assumed these charges were included in the rent; the Master Tenant's claim regarding the use of the laundry facilities is not credible; the Master Tenant does not pay for all of the utilities and shared household expenses; the subtenant has also provided furnishings for which he does not charge his house-mates; and the ALJ greatly over-valued the amenities provided by the Master Tenant.

MSC: To deny the appeal. (Mosbrucker/Gruber: 5-0)

F. 322 Frederick #1

AT130066
(re-scheduled from 8/13/13)

MSC: To recuse Commissioner Crow from consideration of this appeal.
(Mosbrucker/Gruber: 5-0)

The tenant's appeal was filed 5 days late because the tenant was advised that there was no point in his filing an appeal.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Marshall: 5-0)

The landlord's petition seeking a determination as to whether there are any tenants in occupancy in the subject unit was granted as the ALJ found that the original tenant no longer permanently resides in the unit and the other occupant of the unit does not meet the definition of tenant. On appeal, the tenant argues that: he meets all the requirements to be considered a tenant under the Ordinance; it is not reasonable to believe that the landlord thought he was house-sitting for 5 years; the landlord's representative lied at the hearing and should not be considered credible; he is a tenant at sufferance; and the rent increase is in retaliation for his having called the building inspectors regarding habitability problems in the unit.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing to consider whether the appellant is a tenant at sufferance and, if so, whether an unlimited rent increase is authorized by Costa-Hawkins rather than Rules and Regulations Section 1.21. (Marshall/Mosbrucker: 3-2; Gruber, Mosser dissenting)

G. 2085 Bush #507

AT130071

The tenant's petition alleging decreased housing services was denied, for the most part. However, the landlord was found liable to the tenant in the amount of \$150.00 due to the landlord's failure to paint the balcony. The tenant appeals the decision on the grounds that: the ALJ exceeded her jurisdiction in ruling on the tenant's harassment and quiet enjoyment claims; the ALJ should have granted her request to postpone the hearing, as she had recently undergone oral surgery; she was erroneously informed that her claims could not go back prior to one year; and the ALJ abused her discretion by stating that the tenant withdrew her failure to repair claims, and then ruling on those claims.

MSC: To deny the appeal. (Gruber/Mosser: 5-0)

H. 1361 Filbert

AL130045
(cont. from 7/16/13)

The tenant's petition requesting a determination of her proper base rent was granted and the landlord was found liable to the tenant in the amount of \$22,568.45 due to unlawful rent increases. The landlord appeals the decision on the grounds that: the premises should be considered exempt from Rent Board jurisdiction until the passage of Proposition I in 1994, because the owner lives in the other single family dwelling on the same lot, and the intent of the exemption was to protect small property owners who lived in proximity to their tenants; the Board's policy regarding owner occupancy exemption should be consistent with the single family exemption under Costa-Hawkins; and the decision is unfair and should be barred by the equitable doctrine of laches.

Prior to the June 11, 2013 meeting, the landlord's attorney submitted a request for postponement of the appeal consideration in order to conduct legal research at the Rent Board office regarding the interpretation of exemption prior to the passage of Proposition I in 1994. It was the consensus of the Board to grant the landlord's request, provide a briefing schedule for the parties and reschedule the appeal for the July 16th meeting. After further discussion at the July 16th meeting, the Board continued this matter to this evening's meeting in order for the landlord to augment his appeal with a hardship claim, if applicable, and in hopes that the parties would enter into settlement discussions.

MSC: To deny the landlord's substantive appeal. (Mosbrucker/Marshall: 5-0)

MSC: To accept the landlord's financial hardship appeal and remand the case to allow the other owner of the property to file a Hardship Application at the Rent Board Office by the close of business on October 15, 2013; if not, then the landlord's hardship appeal is also denied.
(Mosbrucker/Marshall: 5-0)

I. 165 Beacon

AT130072

The landlord's petition for a rent increase from \$450.00 to \$1,461.60 based on comparable rents was granted. On appeal, the tenant argues that: the initial rent for the unit was set by his father, the landlord at the time, before he moved in to the unit; the rent was set low because of habitability problems in the unit; the landlord's witness was retained by the landlord's attorney in a civil case and his evidence should not be found credible; and the rent increase will serve to evict him from San Francisco.

MSC: To accept the appeal and remand the case for a supplemental hearing to determine whether a special relationship existed, noting who rented the unit and, if a special relationship is found, to consider the unique character of the unit and its condition in determining the comparable rent.
(Mosbrucker/Marshall: 5-0)

J. 312 – 18th Ave. #1

AT130073

The tenant's petition alleging an unlawful rent increase from \$984.00 to \$2,000.00 per month was denied because the ALJ found that the original tenant no longer permanently resides on the premises and the subtenants took up residence after January 1, 1996. On appeal, the tenant argues that: the tenant has constantly maintained her permanent residence at the subject unit and resides there part-time as well as at a condominium unit she purchased in San Francisco; the Rent Board Commissioners have consistently held that a tenant can permanently reside in more than one unit; the tenant's rental agreement does not require that she permanently reside in the unit as she is still in lawful possession; the decision is not supported by the evidence; the tenant has resided in the unit on a full-time basis since May, prior to the effective date of the Costa-Hawkins rent increase; the service of a 3-day notice on the tenant cancelled the Costa-Hawkins increase; and the

landlord failed to meet its burden of proving that the tenant no longer permanently resides in the unit.

MSC: To recuse Commissioner Marshall from consideration of this appeal.
(Mosbrucker/Qian: 5-0)

MSC: To deny the appeal. (Mosser/Gruber: 3-2; Mosbrucker, Qian dissenting)

K. 1372 Pine #108

AT130074

The tenant's appeal was filed one day late because the tenant thought that the postmark date was operative, as opposed to the date of issuance of the decision.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Marshall: 5-0)

The tenant's petition alleging decreased housing services due to noise from an upstairs unit was denied. On appeal, the tenant claims that: the ALJ failed to include pertinent facts and made many factual errors in the decision; the Ordinance has been rendered null and void because of the ALJ's obvious bias against the tenant; the applicable law is the implied warranty of habitability, which has been breached; and the tenant is no longer receiving the quiet enjoyment of her kitchen and has suffered a substantial reduction in housing services.

MSC: To deny the appeal. (Mosser/Gruber: 5-0)

L. 300 Buchanan #403

AT130075 & -76

The landlord's petition for a rent increase from \$1,300.00 to \$2,995.00 based on comparable rents was granted, in part, and an increase to \$2,500.00 was found to be warranted. The tenant appeals on the grounds that: the petition was incomplete and submitted without the authorization of the owner; the ALJ did not correctly compare the services provided to the tenant with other units in the building; the landlord failed to prove that the rent was not set as the result of an arms length transaction; there are habitability issues in the unit; evidence provided by the prior property manager should not be found credible; the landlord's witness testified under duress; and there are significant problems with the landlord's evidence of comparable rents. The tenant also appeals the decision on the grounds of financial hardship.

MSC: To deny the tenant's financial hardship and substantive appeals.
(Mosser/Gruber: 3-2; Marshall, Mosbrucker dissenting)

M. 3531 – 17th St.

AT130078

The landlords' petition for certification of capital improvement costs to 3 of 4 units was granted, resulting in a monthly passthrough in the amount of \$30.98. One tenant appeals the decision, asserting that: several of the items constitute routine maintenance or repair

and not capital improvement work; the plumbing work was done for a vacant unit and did not benefit all of the units in the building; some of the costs are unreasonably high; and the roof work could have been done on other buildings owned by the landlords, as there is no address on the invoice.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the issue of whether the plumbing work was done in a vacant unit in the building and to deny the appeal as to all other issues. A supplemental hearing will be held only if necessary.
(Marshall/Mosbrucker: 5-0)

N. 2534 Washington

AL130079 & -80

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$3,774.00. The Master Tenant appeals the decision on the grounds of financial hardship and on the following grounds: the petition constitutes harassment; the subtenant has damaged her personal property and assaulted her; there are errors in the decision; the subtenant lied at the hearing; the subtenant failed to pay rent for the month of March; the ALJ under-valued the amenities that were provided; and the subtenant agreed to pay market rent for her room in the unit when she moved in.

MSC: To deny both the Master Tenant's substantive and hardship appeals.
(Mosbrucker/Mosser: 5-0)

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics from the months of June, July and August.

B. Legislation amending the Ordinance to provide new standards for tenant financial hardship appeals to capital improvement passthroughs.

C. The published decision in the case of *Dromy v. Lukovsky* which held that, under certain conditions, a landlord could hold Open Houses on weekend days between 1:00 and 4:30 p.m.

D. A Pending Litigation Status Report from Senior Administrative Law Judge Tim Lee.

E. A letter from landlord Teresa Welborn raising privacy concerns associated with the information required on the landlord petition form.

F. A Memorandum from City Attorney Dennis Herrera regarding political activity by City officers and employees.

G. Articles from the S.F. Examiner, BeyondChron, S.F. Magazine, the S.F. Chronicle, the New York Times, SpiegelOnline, the S.F. Bay Guardian and the Financial Times.

H. A letter from Lucia Kimble of Causa Justa supporting the proposed amendment to Rules §12.19 and asking that the Board develop a "Right to Return Form" for tenants displaced by fire.

VIII. Director's Report

Executive Director Wolf let the Board know that the agency is currently experiencing a petition backlog, which has resulted in an increase in the time it takes for hearings to be scheduled. She outlined some of the measures that are being taken to reduce the backlog, including converting some mediation slots to arbitrations, tightening up on scheduling and increasing a formerly half-time ALJ's hours to full-time. She told them that she appeared before the SRO Task Force for the annual discussion of issues of concern to SRO hotel tenants. She let them know that the rental unit fee for the next Fiscal Year will remain at \$29 for residential units and \$14.50 for guest units; the projected fee for Fiscal Year '14/'15 is \$30 and \$15. Lastly, she informed them that Neutral Commissioner Brooks Beard has moved to Marin, and therefore resigned from the Board; a new Neutral is being sought. Senior Administrative Law Judge Tim Lee said that the landlord in the Drolapas case has filed an appeal – the issue is whether a minor can qualify as an "original occupant" under Costa-Hawkins.

IX. Old Business

Assembly Bill 1925 (Civil Code §1947.9)

Senior ALJ Tim Lee told the Board that there were no new notices for an eviction of less than 20 days for capital improvement work since the last Board meeting.

IV. Remarks from the Public (cont.)

D. Jennifer Ritchie told the Board that the subtenant knew the amount of rent when she moved in, and said that she should have come to her to work out an agreement. Instead, she made the situation "unlivable." Ms. Ritchie maintained that the market rent was over \$2,000 for a similar room, and the amenities she provided were under-valued. She opined that denying her a repayment plan was "unfair."

E. Greg Schneider, the tenant at 300 Buchanan (AT130075 & -76), told the Board that the landlord's petition was filed by someone who had no legal authorization and that the was "disappointed" that his appeal was denied.

X. New Business

Telephonic Testimony

Discussion of this issue was continued to the next Board meeting.

XI. Calendar Items

October 15, 2013

9 appeal considerations

Old Business: AB 1925 (Civil Code Section 1947.9)

New Business: Telephonic Testimony

XII. Adjournment

President Gruber adjourned the meeting at 7:15 p.m.

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City and County of San Francisco

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KENT QIANNOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

Tuesday, October 15, 2013

at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 635 San Jose

AT130092

The subtenant appeals the dismissal of a 6.15C(3) petition due to their failure to appear at the hearing.

B. 2400 Pacific #604

AT130093

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 1801 – 38th Ave.

AL130088

The landlord appeals the decision granting a claim of unlawful rent increases.

D. 559 Shotwell

AL130087

The landlord appeals the decision disallowing certification of certain capital improvement costs.

E. 922 Post #504

AT130089

The tenant appeals the decision granting a claim of decreased housing services.

F. 74 Germania St.

AL130084

The landlord appeals the decision finding that no Costa-Hawkins rent increase is warranted because the tenant moved in to the unit prior to January 1, 1996.

G. 752 Pacific #36

AL130086

The landlord appeals the decision finding that no Costa-Hawkins rent increase is warranted because the occupant of the unit is a co-tenant rather than a subtenant.

H. 3582 – 18th St.

AT130085

The tenants appeal the decision finding that a Costa-Hawkins rent increase is warranted because the original tenants no longer permanently reside on the premises.

I. 330 Grafton Ave.

AL130090

The landlord appeals the decision granting a claim of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

IV. Remarks from the Public (cont.)

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KENT QIAN

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, October 15, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

115/13 II. Roll Call

Commissioners Present: Dandillaya; Gruber; Marshall; Mosbrucker; Mosser;
Murphy.
Commissioners not Present: Crow; Hurley.
Staff Present: Lee; Wolf.

Commissioner Qian appeared on the record at 6:16 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of September 17, 2013.
(Mosbrucker/Mosser: 5-0)

IV. Remarks from the Public

A. Attorney Michael Hall, representing the landlord in the case at 74 Germania (AL130084), told the Board that there is a "profound" error in the Administrative Law Judge's (ALJ's) decision in that the landlord's witness said that she saw the subtenant at the unit, rather than the original tenant or her husband. Mr. Hall said that at some point it may be necessary to litigate the issue of the tenant's abandonment of the unit and asked that the Board remand the case to correct the error, although it will not affect the outcome.

B. Tenant Stefan White of 922 Post #504 (AT130089) told the Board that he couldn't use his oven for 32 days and that the stove that was provided was of defective quality. Mr. White said that a \$50 rent reduction was inadequate because he had to eat out and that the amount is insufficient to incentivize the landlord to make repairs.

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C. Tenant Greg Schneider remarked regarding Assembly Bill 1925 (Civil Code §1947.9), saying that \$275 per day sounds like a lot but one-week hotel rates are higher than that. Mr. Schneider said that parking and transportation costs also need to be incorporated.

V. Consideration of Appeals

A. 635 San Jose

AT130092

The subtenant's petition alleging that they paid a disproportional share of the rent pursuant to Rules §6.15C(3) was dismissed due to the petitioner's failure to appear at the hearing. On appeal, the petitioner claims that the notice was sent to the wrong address, and provides the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Marshall: 5-0)

MSC: To accept the appeal and remand the case for a new hearing
(Mosbrucker/Marshall: 5-0)

B. 2400 Pacific #604

AT130093

The landlord's petition for certification of capital improvement costs to 49 of 62 units was granting, resulting in a monthly passthrough in the amount of \$7.17. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case to be consolidated with the tenant's hardship challenge to a water revenue bond passthrough on October 30, 2013 at 2:00 p.m. (Marshall/Mosbrucker: 5-0)

C. 1801 – 38th Ave.

AL130088

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$11,386.55. On appeal, the landlord argues that the landlord should not be punished because the tenant initiated and paid rent increases in excess of limitations, and the two unlawful increases given by the landlord were due to capital improvement work on the property.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

D. 559 Shotwell

AL130087

The landlord's petition for certification of capital improvement costs to one unit was granted only as to the costs of new drain spouts. The cost of new siding was not certified as the work was completed in 2007, which was more than five years before the petition was filed. The landlord appeals, arguing that the ALJ overlooked evidence showing that the two items were actually part of one project.

MSC: To deny the appeal. (Marshall/Mosbrucker: 5-0)

E. 922 Post #504

AT130089

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$50.00 due to a non-operable oven for a one-month period. On appeal, the tenant argues that the amount of the rent reduction is insufficient to reimburse him for meals he had to eat out when he did not have an oven, nor does it provide the landlord with sufficient incentive to perform necessary repairs.

MSF: To accept the appeal and remand the case to the Administrative Law Judge to re-examine the amount of the rent reduction.
(Marshall/Mosbrucker: 2-3; Dandillaya, Gruber, Murphy dissenting)

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Marshall, Mosbrucker dissenting)

F. 74 Germania St.

AL130084

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$3,953.04 as the ALJ found that the tenant moved in to the unit prior to January 1, 1996 and therefore no Costa-Hawkins rent increase was warranted. On appeal, the landlord claims that: there are factual errors in the decision; the ALJ failed to rule on whether the original tenant still permanently resides in the subject unit; the tenants' deceptive behavior should discredit their testimony; and the tenant's voter registration form is not dispositive as to when he moved in to the unit.

MSC: To deny the landlord's substantive appeal but to remand the case to the Administrative Law Judge on the record for a review of whether a correction to the decision is necessary regarding the testimony of the landlord's witness. (Mosbrucker/Marshall: 4-1; Gruber dissenting)

G. 752 Pacific #36

AL130086

The landlord's petition seeking a determination as to whether a rent increase is warranted pursuant to Rules §1.21 or Costa-Hawkins was denied because the ALJ found that the current occupant of the unit had established a direct landlord-tenant relationship with the landlord and is a co-tenant, rather than a subtenant. On appeal, the landlord contends that his agent has never accepted rent from the current occupant of the unit but, rather, has always accepted rent from her grandfather or mother; nor has the landlord accepted repair requests from the tenant, which in and of itself would not create a tenancy.

MSC: To accept the appeal and remand the case for a supplemental hearing to have the tenant testify and for the Administrative Law Judge to consider any new evidence provided by either party. (Murphy/Gruber: 3-2; Mosbrucker, Marshall dissenting)

H. 3582 – 18th St.

AT130085

The tenants' petition alleging an unlawful rent increase was denied because the ALJ found that the original tenants no longer permanently reside in the subject unit and a Costa-Hawkins increase is therefore warranted. On appeal, the tenants claim that: the ALJ ignored documentary evidence that the tenant still resides in the unit; and the telephonic testimony of a witness should not have been found to be more credible than that of the tenants.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

I. 330 Grafton Ave.

AL130090

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$3,412.50 due to the lack of a heat source in the unit. On appeal, the landlord claims that: they never received notice from the tenant regarding the lack of heat in the unit and heat was supplied during some of the time period in question.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A copy of the Rules and Regulations amending Section 12.19, effective September 17, 2013.

B. The office workload statistics for the month of September, 2013.

C. Articles from The Small Property Owners Institute Newsletter, The Tyee, The New Yorker, BeyondChron, The Bay Guardian, The S.F. Chronicle, The New York Times, The S.F. Examiner and The S.F. Business Times.

VII. Director's Report

Executive Director Wolf told the Board about two pieces of legislation recently introduced at the Board of Supervisors' Land Use Committee: Supervisor Chiu's proposal would provide a preference in occupying units or receiving assistance under all affordable housing programs administered or funded by the City to tenants being evicted under the Ellis Act; and Supervisor Campos has re-introduced legislation originally promulgated by ex-Supervisor Olague which would provide for hearings at the Rent Board on tenant allegations of landlord harassment constituting a wrongful endeavor to recover possession of the tenant's unit. Senior ALJ Tim Lee let the Board know that Governor Brown has vetoed Assembly Bill 1229, which would have superseded the holding in Palmer v. City of Los Angeles and allow local governments to require inclusionary housing in new residential

development projects. Ms. Wolf also told the Board that the staff Holiday Party will be on December 10th and the Board's Holiday Dinner will be after the Board meeting on December 17th.

VIII. Old Business

Assembly Bill 1925 (Civil Code Section 1947.9)

Senior ALJ Lee told the Board that there was only one notice for an eviction of less than 20 days for capital improvement work since the last Board meeting.

IX. New Business

Telephonic Testimony

The Board received a letter from Attorney Dave Wasserman raising concerns about the allowance of telephonic testimony, especially in light of Evidence Code Section 711. Executive Director Wolf explained that staff discourages phone testimony unless there is a good reason for the inability of the party to personally appear, and informs the requestor that there are evidentiary consequences of not appearing in person as credibility is harder to assess. Commissioner Murphy strenuously argued that phone testimony should be restricted to witnesses, but that petitioners should have to be present at the hearing in order to meet their burden. The Board discussed the possibility of technological solutions such as Skype and Commissioner Mosbrucker thought this should be explored if possible but not required. Ms. Wolf said that she would talk to Deputy Director Robert Collins about the possibilities and report back to the Board.

IV. Remarks from the Public (cont.)

D. Greg Schneider said that there are better technological alternatives to Skype for telephonic testimony, which is "too risky" as the individual could actually be someone else.

X. Calendar Items

November 12, 2013

8 appeal considerations

Old Business:

A. AB1925 (Civil Code §1947.9)

B. Telephonic Testimony

New Business: Capital Improvement Hardship Procedures

XI. Adjournment

President Gruber adjourned the meeting at 7:20 p.m.

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Edwin M. Lee
Mayor

Delene Wolf
Executive Director

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PRESIDENT

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DAVE CROW
SHOBA DANDILAYA
JIM HURLEY
POLLY MARSHALL
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
KENT QIAN

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, November 12, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 2345 Larkin St., Apt. 6

AT130096

The tenant appeals the dismissal of his petition alleging decreased housing services due to his failure to appear at the hearing.

B. 1661 Bush #8

AT130100

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 905 Ashbury, Apt. 1

AT130101

The tenant appeals the dismissal of his petition alleging decreased housing services due to his failure to appear at the hearing.

D. 909 Geary #414

AL130095

The tenant appeals the denial of a petition alleging decreased housing services pursuant to the Hotel Visitor Policy.

E. 559-563 Shotwell

AL130094

The landlord appeals the decision denying certification of capital improvement costs.

F. 3419 Geary #2

AL130095

The landlord appeals the decision granting a claim of unlawful rent increases.

G. 3721 – 25th St.

AT130097

The tenant appeals the decision determining that the unit was not her principal place of residence pursuant to Rules §1.21.

H. 1948 Mason

AT130098

The tenant appeals the decision granting a claim of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

A., Assembly Bill 1925 (Civil Code Section 1947.9)

B. Telephonic Testimony

IV. Remarks from the Public (cont.)

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IX. New Business

New Rent Ordinance Amendments re Capital Improvement Hardship Applications and Effect on Existing Rent Board Procedures

X. Calendar Items

XI. Adjournment

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City and County of San Francisco



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DAVID GRUBER
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NEVEO MOSSER
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KENT QIAN

Residential Rent Stabilization
and Arbitration Board

Edwin M. Lee
Mayor

Delene Wolf
Executive Director

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, November 12, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Gruber called the meeting to order at 6:02 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hurley; Marshall; Mosser.
Commissioners not Present: Mosbrucker.
Staff Present: Collins; Lee; Wolf.

Commissioner Qian appeared on the record at 6:07 p.m.; Commissioner Murphy arrived at the meeting at 6:14 p.m. Commissioners Mosser and Marshall went off the record at 8:00 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 15, 2013.
(Marshall/Hurley: 5-0)

IV. Remarks from the Public

A. Attorney Andrew Catterall, representing the landlord in the case at 1948 Mason (AT130098), told the Board that the tenant prevailed on a decrease in services petition for lack of heat and a defective stove and the rent reduction was granted back to the time the current landlord purchased the property. The tenant is now asking that the rent reductions go back to the time the issue first arose, which was many years earlier. Mr. Catterall said that the tenant did not make that request in the petition and waived such relief at the hearing. Mr. Catterall informed the Board that the landlord has now remedied both conditions.

B. Evan Chan spoke on behalf of the landlord at 3419 Geary (AL130095), saying that the tenants refused to sign a written lease under the same terms and that the base rent should have been a different amount. Mr. Chan said that the landlord's banking entitlement should be calculated on the correct amount.

C. The landlord in the case at 3419 Geary said that the utilities had always been separate from the rent, but the tenant is now saying that they were included. The utilities are now much more expensive, \$178 as opposed to \$75, but the landlord does not have a witness to his agreement with the tenant.

D. John Fitch, the tenant at 909 Geary (AT130095), told the Board that his claim was denied in Small Claims Court because he had not suffered any damages, but that the merits of the claim had not been adjudicated. Mr. Fitch said that another hotel tenant's visitor had been 86'ed twice but was then reinstated, which poses a risk to the other residents. Mr. Fitch contended that once you're 86'ed you cannot come back under any circumstances.

E. Hendrika Baert, the tenant in the case at 2345 Larkin (AT130096, told the Board that she has had 3 different owners over 22 years. Ms. Baert said that the landlord took the garage away and she had to put her belongings in storage but was refused a rent reduction.

F. Greg Schneider thanked the Board for their consideration of the issue of telephone testimony.

V. Consideration of Appeals

A. 2345 Larkin, Apt. 6

AT130096

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing; should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Murphy: 5-0)

B. 1661 Bush #8

AT130100

The landlord's petition for certification of capital improvement costs to 10 of 12 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case in order for the tenant to fill out the new forms required under the Board's recently amended hardship provisions pursuant to Ordinance Sections 37.7(i) & (j).

C. 905 Ashbury, Apt. 1

AT130101

The tenant's petition alleging decreased housing services was dismissed on remand due to his failure to appear at the properly noticed hearing. On appeal, the tenant says that he has moved out of the country and asks that the hearing be rescheduled.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a new hearing; should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.
(Crow/Marshall: 4-1; Gruber dissenting)

D. 909 Geary #414

AT130099

The tenant's decrease in services petition was denied because the ALJ found that the Hotel Visitor Policy did not require that a hotel operator continue to deny visitation rights to a guest who had been "86ed" from the premises. On appeal, the tenant claims that he should have been given written notice when the visitor was 86ed; that he proved that his safety and security were violated; and that the management of the SRO hotel should have been more transparent in their dealings with him.

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Crow, Marshall dissenting)

E. 559-563 Shotwell

AL130094

The landlord's petition for certification of capital improvement costs was denied because the ALJ found that the project was completed more than five years before the petition was filed. On appeal, the landlord claims that: the owner did not include the cost of his own work on the project, which led to an erroneous completion date in the petition.

MSC: To deny the appeal. (Marshall/Crow: 5-0)

F. 3419 Geary #2

AL130095

The tenants' petition alleging unlawful rent increases was granted and the landlord was found liable to the tenants in the amount of \$6,231.05. On appeal, the landlord maintains that: there is an error in the decision as to the lawful base rent amount; the tenants have already been compensated for some of the overcharges as part of a settlement agreement between the parties; and the tenants agreed to pay for utilities as part of that agreement.

MSC: To deny the appeal. (Marshall/Crow: 5-0)

G. 3721 – 25th St.

AT130097

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted because the ALJ found that the tenant's extended absence from the unit for nine years was not a reasonable temporary absence and the unit was therefore no longer her principal place of residence. On appeal, the tenant argues that: her prolonged absence from the

unit was reasonable under the circumstances; she never established an alternative principal place of residence outside of San Francisco; the landlord failed to submit any new evidence since the last decision, in which the tenant prevailed; the landlord's witness statements constituted hearsay; the landlord's petition was motivated by the current rental market; and she currently resides in the subject unit, which she never used as a pied a terre.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

H. 1948 Mason

AT130098

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$2,730.00 due to the lack of a heat source and working oven in the unit. On appeal, the tenant asks that the rent reduction go back to February 1992, when a broken heater was removed by the prior landlord.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. Copies of legislation introduced at the Land Use Committee on November 12th: a proposal by Supervisor Campos to provide for hearings at the Rent Board on tenant allegations of landlord harassment and a proposal by Supervisor Wiener to allow for the construction of additional in-law units in the Castro.

B. A copy of the agency's Annual Report for Fiscal Year 2012-2013.

C. Articles from the Bay Area Reporter, the New York Times, the Tyee, the S.F. Examiner, the S.F. Examiner, and BeyondChron.

VII. Director's Report

Executive Director Wolf told the Board members that they must complete mandatory sexual harassment training by December 31st and provided them with their Disaster Service Worker I.D. numbers in order to access the on-line program. She outlined the new legislation introduced before the Land Use Committee. She also reminded the Commissioners that the Staff Holiday Party will be on December 10th at Don Ramon's Restaurant and the Board's Holiday Dinner will be after the meeting on December 17th.

VIII. Old Business

A. Assembly Bill 1925 (Civil Code Section 1947.9)

Senior ALJ Lee told the Board that there was only one notice for an eviction of less than 20 days for capital improvement work since the last Board meeting.

B. Telephonic Testimony

The Board continued their discussion of concerns regarding telephonic testimony, especially in light of Evidence Code Section 711. Deputy Director Robert Collins reported on various technological options, and expressed his concern that hearings would have to be re-convened if there were glitches. The Department does not have Wifi and would have to get the Department of Technology's permission for wireless. There is also the problem of members of the public not all having access to technology and the Department not having a full-time IT staff person to provide assistance. Commissioner Murphy maintained that there is a fundamental due process right to confront the party bringing the claim and insisted that the person bearing the burden of proof needs to be there.

Staff will compile statistics on the numbers and types of requests for phone testimony in the past year and report back to the Board.

IV. Remarks from the Public (cont.)

G. Evan Chan asked what the amount of the corrected base rent would be and said that the landlord should be given credit for annual increases that could have been imposed.

IX. New Business

Executive Director Wolf went over a Memo from Senior Staff explaining that, with recent amendments to the Ordinance (Sections 37.7(i) and (j)), there are now three different procedures and criteria for the processing and determination of tenant hardship claims. The question becomes whether the Board wants to: 1) apply the new standard and procedures to all hardship applications; or 2) maintain one standard and procedure for capital improvement passthroughs and a different standard and procedures for Operating and Maintenance Expense increases and utility and water revenue bond measure passthroughs. In the absence of a uniform standard, a tenant who seeks hardship relief from a capital improvement, O&M, and utility or water revenue bond passthrough would have to file a CIP Hardship Application for the CI, a hardship appeal of the O&M decision, and a different hardship application for the utility or water bond passthrough, and the Board will determine whether hardship relief is warranted for each type of increase. After a brief discussion, it was agreed that staff will provide the Board with ongoing information as to the outcomes of the new standards and the quantities and types of hardship challenges being filed, and the Commissioners will then decide whether further procedural changes are warranted.

X. Calendar Items

December 17, 2013

7 appeal considerations

Old Business:

A. AB 1925 (Civil Code Section 1947.9)

B. Hardship Procedures

C. Telephonic Testimony

New Business: Staffing Issues

XI. Adjournment

President Gruber adjourned the meeting at 8:05 p.m.

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**NOTICE OF THE REGULAR MEETING OF
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STABILIZATION & ARBITRATION BOARD,**

Tuesday, December 17, 2013
at 6:00 p.m.

25 Van Ness Avenue, Suite 70, Lower Level

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DEC 17 2013

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I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

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V. Consideration of Appeals

A. 4740 Balboa #502, 106 & 104 AT130104-06

The tenants in three units appeal the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

B. 1485 Clay #9 & 11 AT130108 & -09

The tenants in two units appeal the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

C. 3489 – 17th St. AT130102

The subtenant appeals the dismissal of his petition alleging that he paid a disproportional share of the rent pursuant to Rules Section 6.15C(3).

D. 17 Romolo Pl. AT130110

The tenant appeals the remand decision denying claims of decreased housing services.

E. 272 – 24th Ave.

AT130103

The tenant appeals the decision denying her claim of decreased housing services.

F. 643 Oak #8

AL130107

The landlord appeals the decision granting claims of decreased housing services and unlawful rent increases.

G. 46 Belvedere

AL130111

The landlord appeals the remand decision finding that a claim of decreased housing services is not barred by the Golden Gateway decision.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Assembly Bill 1925 (Civil Code Section 1947.9)

B. Telephonic Testimony

C. New Rent Ordinance Amendments re Capital Improvement Hardship Applications and Effect on Existing Rent Board Procedures

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

Staffing Issues

X. Calendar Items

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JAN 16 2014

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I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Crow; Dandillaya; Gruber; Hurley; Marshall;
Mosbrucker; Mosser; Murphy; Qian.
Staff Present: Gartzman; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of November 12, 2013.
(Murphy/Marshall: 5-0)

IV. Remarks from the Public

A. Tenant Peter Doty of 46 Belvedere (AL130111) told the Board that there were 3 hearings in his case. Mr. Doty said that the landlord attorney's new evidence was not submitted at any of the hearings, and could have been, nor was it under penalty of perjury.

B. Karen Uchiyama, attorney for the landlord in the Belvedere case, told the Board that there was a math error in the decision because the tenant stopped paying rent. Ms. Uchiyama said that the Golden Gateway decision is silent on what constitutes "necessary work" but that the Board interprets the decision too narrowly, since the intent was not to punish landlords for doing renovations and improvements that benefit tenants and the public. Ms. Uchiyama said that in the instant case, an aging foundation was replaced by a code-compliant underground garage and that the tenant experienced "mere inconvenience" due to construction noise.

C. Tenant Rosa Escobar of 4740 Balboa (AT130106) told the Board that she lost her job and is seeking a temporary deferral of the rent increase until she finds a new job.

D. Tenant Natasia Miller of 1485 Clay (AT130108) also said that she temporarily doesn't have a job.

V. Consideration of Appeals

A. 4740 Balboa #502, 106 & 104

AT130104-06

The landlord's petition for rent increases to 27 of 33 units based on increased operating expenses was granted. The tenants in 3 units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for a hearing on the tenants' claims of financial hardship.
(Marshall/Mosbrucker: 5-0)

B. 1485 Clay #9 & 11

AT130108 & -09

The landlord's petition for rent increases to 7 of 11 units based on increased operating expenses was granted. The tenants in 2 units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for a hearing on the tenants' claims of financial hardship.
(Marshall/Mosbrucker: 5-0)

C. 3489 – 17th St.

AT130102

The subtenant's petition alleging that he paid a disproportional share of the rent pursuant to Rules Section 6.15C(3) was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the subtenant claims not to have received the Notice of Hearing and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing; should the subtenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Marshall/Mosbrucker: 5-0)

D. 17 Romolo Pl.

AT130110

The tenant's appeal was filed one day late because although she paid extra to have it overnighted, it did not arrive at the Rent Board in time, probably because of the holidays.

MSC: To find good cause for the late filing of the appeal.
(Mosbrucker/Marshall: 5-0)

The tenant's petition alleging decreased housing services was granted, in part. Upon appeal from the landlord, the case was remanded for a supplemental hearing to consider new evidence submitted by the parties. In the Decision on Remand, the ALJ denied the tenant's petition in its entirety. The tenant appeals, arguing that: there are factual errors in the Decision; she did not notify hotel management of the conditions because she was afraid of reprisals; and the property manager's testimony at the hearing was not credible.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

E. 272 – 24th Ave.

AT130103

The tenant's petition alleging decreased housing services due to the presence of fleas and other bugs in the unit was denied because the ALJ found that the landlord responded in a timely manner after receiving notice of the problem. On appeal, the tenant maintains that: she gave the landlord oral notice of the problem in mid-June, rather than July 3rd; the landlord failed to respond until the tenant went to the Department of Public Health; the tenant was forced to engage in self-help measures that sickened herself and her family; and the landlord should be required to place screens on the windows in the unit.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

F. 643 Oak #8

AL130107

The tenant's petition alleging unlawful rent increases and decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$779.80 due to rent overpayments and \$337.50 due to the replacement of a bathtub with a shower. A claim of lack of use of a common area bathroom was denied pursuant to the Golden Gateway decision. On appeal, the landlord argues that: the tenant made a modification to the bathtub that was not approved by the landlord and caused the problem; the tenant did not object to the shower as a replacement at the time it was installed; and the landlord asks that the Board let him know the amount of rent increase that he is entitled to.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

G. 46 Belvedere

AL130111

MSC: To recuse Commissioner Mosbrucker from consideration of this appeal.
(Crow/Murphy: 5-0)

The tenant's petition alleging decreased housing services and an unlawful rent increase was granted, in part and denied in part. On remand, the ALJ found that the rent increase to \$2,900.00 was warranted under Costa-Hawkins as the tenant is a post-'96 subtenant who had not established a direct relationship with the landlords at the time the notice of rent increase was served. However, the ALJ determined that the tenant's claim of loss of quiet enjoyment of his unit due to construction noise was not barred by the Golden Gateway decision because construction of a garage did not constitute reasonably necessary work and the landlords were found liable to the tenant for 50% of the rent during the time that the

work was ongoing. The tenant's claim of decreased housing services due to the landlords' alleged failure to allow a replacement roommate was also denied. The landlords appeal the portion of the decision ordering a rent reduction due to construction noise on the grounds that: the remand decision punishes the landlords for replacing an old, unsafe foundation with a new underground parking garage, which contravenes the Golden Gateway decision and is not good public policy; the tenant's loss of services was temporary, the work was performed in a timely manner and did not justify a 50% rent reduction since the tenant still had full use of the premises; granting a rent reduction for capital improvement work takes away landlords' incentive to repair and upgrade their properties; the amounts granted to the tenant are incorrect due to factual errors in the decision; and the work was required to make the building code compliant.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge on the record for a necessary Technical Correction.
(Marshall/Crow: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A Resolution passed by the Board of Supervisors supporting amendments to State Law to return local control over the Ellis Act.

B. A schedule of proposed Board meeting dates for 2014.

C. Office workload statistics for the months of October and November, 2013.

D. A current copy of the amended Rent Ordinance.

E. Articles from the Examiner, the Sacramento Bee, the Mayor's Office of Communications, BeyondChron, the S.F. Chronicle, the Bay Area Reporter, Business Day, the S.F. Weekly, the Bay Guardian, the Los Angeles Times and the New York Times.

VII. Director's Report

Executive Director Wolf told the Commissioners that she went before the Planning Commission to answer rent control questions ancillary to legislation giving tenants evicted under the Ellis Act preference for BMR units. She also informed them that legislation providing for hearings at the Rent Board on tenant allegations of landlord harassment passed unanimously at the Board of Supervisors and will take effect around February 16th. Ms. Wolf reminded the Commissioners that they must complete Sexual Harassment training by December 31, 2013.

VIII. Old Business

A. AB 1925 (Civil Code Section 1947.9)

Senior ALJ Gartzman told the Board there were no notices of eviction for less than 20 days for capital improvement work since the last meeting. The Commissioners agreed that this item no longer needs to be reported at every meeting. Rather, Senior Staff will let the Board know if issues come up that warrant amending the Rules and Regulations.

B. Telephone Testimony

Senior ALJ Gartzman provided the Board with a chart showing the instances of telephone testimony from October 1st through December 15th. The Commissioners discussed the possibility of making technological solutions such as Skype available, but not mandatory. Deputy Director Robert Collins is researching those possibilities and will report back to the Board at a future meeting.

C. New Rent Ordinance Amendments re Capital Improvement Hardship Applications and Effect on Existing Rent Board Procedures

Senior Staff will keep the Board informed as to outcomes under the new hardship standards recently adopted for capital improvement passthroughs.

IV. Remarks from the Public (cont.)

F. Tenant Peter Doty of 46 Belvedere asked if there was going to be another hearing in order to correct the mathematical error in the decision in his case.

G. Attorney Karen Uchiyama reiterated her contention that the Board is taking the Golden Gateway decision too seriously and said that improvements should be treated the same way as repairs and maintenance.

IX. New Business

Staffing Issues

Executive Director Wolf informed the Board that, since there is currently a lengthy backlog for scheduling cases and the departmental workload has gone up significantly, she will be requesting an additional Counselor and Administrative Law Judge position.

X. Calendar Items

January 21, 2014

7 appeal considerations

XI. Adjournment

President Gruber adjourned the meeting at 7:20 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.

Addendum: Any summary statements are provided by the speaker and appended hereto. Their contents are neither generated by, nor subject to approval or verification of accuracy by the San Francisco Rent Board.

